

Fall 1995

Citizen Initiatives in Florida: An Analysis of Florida's Constitutional Initiative Process, Issues, and Alternatives

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P. K. Jameson & Martha Hosack, *Citizen Initiatives in Florida: An Analysis of Florida's Constitutional Initiative Process, Issues, and Alternatives*, 23 Fla. St. U. L. Rev. 417 (2014) .
<http://ir.law.fsu.edu/lr/vol23/iss2/5>

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CITIZEN INITIATIVES IN FLORIDA: AN ANALYSIS OF FLORIDA'S CONSTITUTIONAL INITIATIVE PROCESS, ISSUES, AND ALTERNATIVES

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Pursuant to an assignment by the Florida Senate President during the 1994 interim period, the authors, as analysts for the Florida Senate Committee on Governmental Reform and Oversight, studied the subject of this Article and compiled a report of their findings. Those findings are the basis of this Article, and the authors have excerpted portions of the report into the Article. The views expressed in this Article are those of the authors and are not intended to reflect the opinion of the Florida Senate, Florida House of Representatives, or the Florida Senate Committee on Governmental Reform and Oversight. The authors wish to thank Meredith Woodrum Snowden for technical assistance.

For other recent Articles on this subject, see Daniel R. Gordon, *Protecting Against the State Constitutional Law Junkyard: Proposals To Limit Popular Constitutional Revision in Florida*, 20 NOVA L. REV. 413 (1995); Joseph W. Little, *Does Direct Democracy Threaten Constitutional Governance in Florida?*, 24 STETSON L. REV. 393 (1995).

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I. INTRODUCTION

Lawmaking by initiative differs significantly from America's traditional form of representative government.¹ Initiatives are best described as procedures instituted and controlled by voters to make new laws by amending the constitution or, alternatively, by enacting statutes.² The use of initiatives to amend constitutions or enact statutes frequently is termed "direct democracy" as opposed to "representative democracy."³ Initiatives generally allow the public to bypass the legislature and reserve direct lawmaking power in the voters of the state. Citizens propose constitutional amendments by initiative, and the general electorate adopts or rejects the proposed amendment at the polls.

Florida adopted a constitutional initiative procedure in 1968.⁴ Since then, citizens increasingly have used the procedure to propose amendments to the Florida Constitution. For the 1994 general election,

1. Gilbert Hahn & Steven C. Morton, *Note, Initiative and Referendum—Do They Encourage or Impair Better State Government?*, 5 FLA. ST. U. L. REV. 925, 927 (1977).

2. *Id.* at 925.

3. FLA. S. COMM. ON GOV'T REFORM & OVERSIGHT, A REVIEW OF THE CITIZEN INITIATIVE METHOD OF PROPOSING AMENDMENTS TO THE FLORIDA CONSTITUTION 9 (1995) (on file with comm.) [hereinafter CITIZEN INITIATIVE].

4. FLA. CONST. art. XI, § 3; see TALBOT D'ALEMBERTE, THE FLORIDA STATE CONSTITUTION—A REFERENCE GUIDE 13 (1991).

twenty-six constitutional initiative committees filed with the Department of State expressing their intent to collect signatures for initiative petitions.⁵ While only three initiatives made ballot position during that election, the number of committees formed demonstrates the potential for numerous future revisions and amendments to the constitution.⁶ In fact, several committees are pursuing their failed initiatives for the 1996 election.⁷

There are many concerns about Florida's constitutional initiative process.⁸ A primary issue is the extent to which the constitution should be used to affect and institute policy.⁹ In a 1993 Florida Supreme Court decision, Justice Parker Lee McDonald stated:

The legal principles in the state constitution inherently command a higher status than any other legal rules in our society. By transcending time and changing political mores, the constitution is a document that provides stability in the law and society's consensus on general, fundamental values. Statutory law, on the other hand, provides a set of legal rules that are specific, easily amended, and adaptable to the political, economic, and social changes of our society.¹⁰

However, constitutional amendments by initiative are the only way for Florida citizens to affect law other than through the legislative process. Most states that provide citizens an opportunity to amend their constitutions by initiative also have a procedure to amend statutes by initiative.

This Article examines Florida's constitutional initiative process and describes the constitutional and statutory initiative processes in other states. It then discusses issues about Florida's current constitutional initiative process and addresses several bills introduced during the 1995 Regular Session to revise the current process. The Article concludes that Florida should develop and adopt an indirect statutory initiative procedure. It further concludes that in tandem with instituting a statutory process, Florida should revise the current constitutional initiative process to make it more difficult to amend the constitution.

5. CITIZEN INITIATIVE, *supra* note 3, at 1.

6. *See id.*

7. Interview with Division of Elections, Fla. Dept. of State (Nov. 16, 1995) (notes on file with Fla. S. Comm. on Gov't Reform & Oversight, Tallahassee, Fla.) [hereinafter Division of Elections Interview].

8. *See infra* part VII.

9. *See id.*

10. Advisory Op. to the Att'y Gen. re Limited Marine Net Fishing, 620 So. 2d 997, 1000 (Fla. 1993) (McDonald, J., concurring).

The revisions could include increasing the number of signatures required to place an initiative on the ballot, restricting subject areas, or requiring a super-majority vote for approval. With these legislative actions, Floridians would continue to have a direct voice in their government and also preserve the sanctity of the state's constitution.

II. STATE CONSTITUTIONS

The original thirteen colonies framed their constitutions just before, or soon after, the Declaration of Independence in 1776.¹¹ Some states molded their colonial charters into constitutions.¹² These early constitutions reflected a basic distrust of government and therefore included various provisions to restrain possible governmental abuses.¹³ The constitutions included basic principles of political democracy, such as popular sovereignty, separation of powers, a system of checks and balances, a bill of rights, and a predominant legislature.¹⁴ Early constitutions also established tripartite governments modeled on the federal structure.¹⁵ The constitutions "set forth powers and procedures of the three governmental branches in varying detail, defined state boundaries, described the relationship of the state to the federal government, specified suffrage qualifications and the method of conducting elections, and provided for constitutional amendment and revision."¹⁶

The original state constitutions were short, containing predominantly fundamental matters.¹⁷ Many factors contributed to the increased length and complexity of state constitutions, including the adoption of initiative and referendum procedures in some states, urban growth and urbanization, technological developments, and the resulting growth in the magnitude and complexity of state functions and responsibilities.¹⁸

In the twentieth century, states have relied mainly on formal amendment, revision, and rewriting to develop their constitutions.¹⁹ This method has produced lengthy documents featuring massive

11. ALBERT L. STURM, THIRTY YEARS OF STATE CONSTITUTION-MAKING: 1938-1968 4 (1970).

12. *Id.*

13. *Id.*

14. *Id.* at 4-5.

15. *Id.*

16. *Id.* at 5.

17. *Id.* Sturm points out, "In theory, constitutional provisions are presumed to include only organic features of permanent character and sufficient significance to warrant placement in the basic law." *Id.* at 6.

18. *Id.* at 5.

19. *Id.*

detail.²⁰ This detail is attributable in part to a continued public distrust of legislatures—a distrust resulting from past abuses and excesses by these bodies during the nineteenth century.²¹ In addition, public dissatisfaction with strict judicial interpretations of constitutional provisions, the pressure of special interests for constitutional status, and poor drafting have contributed to the increased length of state constitutions.²² Likewise, lengthy constitutions historically require more amendatory detail.²³

There are four basic avenues for proposing formal alterations to state constitutions: legislative action, popular initiative, constitutional convention, and constitutional commission.²⁴ The Florida Constitution permits all four methods and further allows the Taxation and Budget Reform Commission to propose amendments.²⁵

III. ORIGIN OF INITIATIVES

In the United States, the initiative, referendum, and recall movement emerged from the populist and progressive eras of the late nineteenth and early twentieth centuries.²⁶ At that time, citizens perceived state governments to be controlled by “special interests, such as railroads, bankers, land speculators, and ‘robber barons’.”²⁷ Consequently, processes were devised to allow citizens an avenue to approve or disapprove government actions by direct vote.²⁸

Direct democracy through initiatives differs significantly from representative democracy.²⁹ America’s form of representative democracy was developed to balance minority and civil rights against the dangers of popular rule.³⁰ James Madison proposed that representative government would

20. *Id.*

21. *Id.* at 5-6.

22. *Id.*

23. *Id.*

24. *Id.* at 18.

25. See *infra* notes 57-72 and accompanying text.

26. Tommy Neal, *The Voter Initiative*, 1 NAT’L CONF. STATE LEGISLATURES LEGISBRIEF 38, Oct. 1993, at 1.

27. *Id.*

28. *Id.*

29. See Hahn & Morton, *supra* note 1, at 925.

30. ALFRED BALITZER, *THE INITIATIVE AND REFERENDUM: A STUDY AND EVALUATION OF DIRECT LEGISLATION*, THE CALIFORNIA ROUNDTABLE 13 (1981). The Founding Fathers recognized that direct democracy posed a profound threat to individual rights and liberty. *Id.* The Constitution was “designed to provide a system of government that would prevent either a tyranny of the majority or a tyranny of the few.” *Id.* James Madison “warned against the power of a majority or a minority of the population ‘united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interest of the community’.” *Id.*

refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.³¹

Initiatives, by contrast, reserve direct lawmaking power to the voters through providing them a method to make new laws by amending the constitution or, alternatively, by enacting statutes.³² A criticism of using initiatives to make policy is that this method undermines our basic representative form of government.³³ Moreover, contrary to the original intent of initiatives, there is concern that initiatives become the tool of special interests that can finance the placement of an initiative on the ballot.³⁴ Efforts of the represented to control their representatives through initiatives have been described as curing the problems of democracy with more democracy.³⁵

Although many historical phenomena contributed to the development of mechanisms for direct legislation, the initiative process can be traced directly to Switzerland.³⁶ Between 1831 and 1890, the Swiss adopted forms of the initiative and referendum for both ordinary legislative measures and constitutional proposals.³⁷ The Swiss experience spawned advocates in the United States.³⁸

In 1898, South Dakota became the first state to establish constitutional and statutory initiative processes for direct legislation.³⁹ By 1918, nineteen states had adopted an initiative process; most of these states were west of the Mississippi.⁴⁰ By 1992, twenty-four states had authorized constitutional or statutory initiative processes.⁴¹

IV. HISTORY OF THE FLORIDA CONSTITUTION AND METHODS OF AMENDMENT⁴²

The Florida Constitution has been readopted five times and amended many times since its origin. In 1837, the Florida territory

31. FLA. ADVIS. COUNCIL ON INTERGOVTL. REL., *INITIATIVES AND REFERENDA: ISSUES IN CITIZEN LAWMAKING* i (1986) (on file with comm.) [hereinafter *INITIATIVES & REFERENDA*].

32. Hahn & Morton, *supra* note 1, at 926-27.

33. *Id.*

34. Neal, *supra* note 26, at 2.

35. *INITIATIVES & REFERENDA*, *supra* note 31, at ii.

36. DAVID B. MAGLEBY, *DIRECT LEGISLATION—VOTING ON BALLOT PROPOSITIONS IN THE UNITED STATES* 31 (1984).

37. *See id.*

38. *See id.*

39. *Id.* at 38-39.

40. Neal, *supra* note 26, at 1.

41. *Id.*

42. This brief history is based on Talbot D'Alemberte's *Reference Guide*; see

elected to seek statehood.⁴³ In 1838, the United States Congress set up a two-house Legislature with a twenty-six member House of Representatives and an eleven-member Senate to govern the Florida Territory.⁴⁴ Florida held its first constitutional convention in 1838; in 1839, the voters adopted the proposed constitution by a narrow vote of 2,065 to 1,961.⁴⁵

The constitution of 1838 was Florida's basic charter when the state entered the Union in 1845.⁴⁶ That document was not displaced until Florida joined the Confederacy in 1861.⁴⁷ The 1861 constitution was basically the same as the 1838 constitution with the exception of a recognition of the Confederacy as the national government.⁴⁸ At the end of the Civil War in 1865, Florida needed a new constitution.⁴⁹

Florida adopted the 1865 constitution prior to full implementation of Reconstruction.⁵⁰ In 1867, Congress returned most of the South to military rule and took other steps to transform the governments of the former Confederate states.⁵¹ The 1868 constitution accompanied the second military occupation and provided the governor with authority to appoint state cabinet and county officers.⁵² Many of the 1868 provisions are still in the modern document.⁵³ At the end of Reconstruction in 1885, Florida adopted a new constitution.⁵⁴ An elected cabinet and elected county officials displaced the governor's appointment power.⁵⁵ From 1885 to 1968, the constitution did not undergo further general revision; however, there were numerous changes by amendment.⁵⁶

In 1964, Florida voters approved a proposal for the amendment of the constitution that allowed revision without a constitutional

D'ALEMBERT, *supra* note 4, at 3-15. D'Alemberte, former President of the American Bar Association and current President of Florida State University, was Chairman of the 1978 Constitution Revision Commission.

43. *Id.* (stating that citizens elected statehood by a vote of 2,139 to 1,164).

44. *Id.* at 3.

45. *Id.*

46. *Id.* at 4.

47. *Id.*

48. *Id.* at 5.

49. *Id.*

50. *Id.* at 6.

51. *Id.*

52. *Id.* at 6-7.

53. *Id.* (reporting that the 1868 constitution provided for public schools, the homestead exemption, and uniform taxes and displaced the language which limited the rights of freemen; however, women were not enfranchised).

54. *Id.*

55. *Id.* at 8.

56. *Id.* at 9 (stating that during this 83-year period, 211 amendments were proposed and 147 were adopted).

convention.⁵⁷ In 1965, a statutory Constitution Revision Commission was appointed, and a major constitutional revision occurred in 1968.⁵⁸ The 1968 revision substantially changed the executive and legislative branches⁵⁹ and granted new constitutional privileges.⁶⁰ It also added two new methods for amending the constitution: a constitution revision commission and the initiative procedure.⁶¹

In 1978, the independent Constitution Revision Commission met for the first time in Florida.⁶² However, voters defeated the proposals of the commission, along with a proposal for casino gambling placed on the ballot by initiative.⁶³ In 1988, the Legislature proposed, and the voters approved, a constitutional amendment to create a Taxation and Budget Reform Commission with jurisdiction limited to tax and budget matters.⁶⁴ The commission meets every tenth year and has the power to propose amendments to the constitution.⁶⁵

The Florida Constitution has more methods of amendment than any other state constitution.⁶⁶ Article XI of the Florida Constitution provides that the electorate may adopt revisions or amendments to the

57. *Id.* at 11.

58. *Id.* D'Alemberte notes that the 1968 revision shortened the size of the constitution from 20 articles to 12 and cut the text approximately in half. *Id.* at 12.

59. *Id.* The 1968 constitution made the first reference to a cabinet form of government, established the Lieutenant Governor's office, adopted a provision for succession in the event of the Governor's incapacity, and permitted the Governor to serve two terms. *Id.* This constitution limited the size of the Senate to 40-50 members and the House of Representatives to 80-120 members. *Id.* at 12-13. It also provided for a legislative auditor, a civil service system, and a code of ethics. *Id.* The new constitution also established a unique state court procedure for prompt resolution of apportionment disputes. *Id.* at 13.

60. *Id.* This revision amended the Declaration of Rights to state that no one could be deprived of rights because of race or religion. *Id.* It removed provisions that sought to preserve segregation in the schools and to prevent intermarriage between the races. *Id.* The revision added protections against wiretapping and a provision giving public employees the right to organize. *Id.*

61. *Id.*

62. *Id.* at 15. This was the first time in the United States that a constitution authorized such a commission; other states provided for commissions by general law. *Id.*

63. *Id.* at 15; see also Stephen Maher, *The Conference on the Florida Constitution*, 68 FLA. B. J. 66 (1994).

The 1978 Constitution Revision Commission shaped much of the agenda for further amendment of the constitution. D'ALEMBERTE, *supra* note 4, at 15. Subsequent proposed amendments, substantially the same as those the commission developed, have included: 1) adding a right of privacy to the Declaration of Rights, adopted in 1980; 2) extending impeachment to county judges, adopted in 1988; 3) providing uniform rules for the judicial nominating commissions, adopted in 1984; 4) extending the widows' exemption to widowers, adopted in 1988; 5) allowing the Legislature to classify inventory for property tax purposes, adopted in 1980; and 6) providing various changes in the state's authority relative to bonds, adopted in 1980 and 1984. *Id.*

64. *Id.* at 15.

65. FLA. CONST. art. XI, § 6.

66. D'ALEMBERTE, *supra* note 4, at 15.

constitution in a general election.⁶⁷ Amendments may be placed on the ballot by any of the following methods: 1) adoption of a joint resolution by three-fifths of the membership of the House and Senate;⁶⁸ 2) recommendation of the Constitution Revision Commission, which meets every twentieth year since 1978;⁶⁹ 3) citizen initiative;⁷⁰ 4) recommendation of a constitutional convention;⁷¹ and 5) recommendation of the Taxation and Budget Reform Commission, which meets every tenth year since 1980.⁷² Since the major revision of the constitution in 1968, ninety-seven proposed constitutional amendments have made ballot position.⁷³ Of these, voters adopted seventy-three and rejected twenty-four.⁷⁴

V. AMENDMENT BY INITIATIVE IN FLORIDA

A. *Provisions for Initiatives in the Constitution*

The 1968 revisions to the Florida Constitution provided citizens with the right to propose amendments to the constitution by initiative petition.⁷⁵ The original amendment permitted initiative proposals to change any section of the constitution.⁷⁶ However, a 1972 amendment to article XI, section 3 of the Florida Constitution required proposals to be limited to one subject matter.⁷⁷ In 1994, the electorate adopted an initiative that exempted from the one-subject limitation any initiative limiting the power of government to raise revenue.⁷⁸ Article XI, section 3 currently provides:

[T]he power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that any such revision or amendment, except for those limiting the power of government to raise revenue, shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the secretary of state a petition containing a copy of the proposed revision or amendment, signed by a number of

67. FLA. CONST. art. XI, § 5.

68. *Id.* art. XI, § 1.

69. *Id.* art. XI, § 2.

70. *Id.* art. XI, § 3.

71. *Id.* art. XI, § 4.

72. *Id.* art. XI, § 6.

73. Division of Elections Interview, *supra* note 7.

74. *Id.*

75. FLA. CONST. art. XI, § 3; see INITIATIVES & REFERENDA, *supra* note 31, at 15.

76. INITIATIVES & REFERENDA, *supra* note 31, at 15.

77. *Id.*

78. See FLA. CONST. art. XI, § 3 (1994 constitutional amendment number four relating to revenue limits).

electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts, respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.⁷⁹

Other sections of the constitution also affect the initiative process. Article XI, section 5 provides procedures for placing proposed amendments on the ballot, including initiative proposals.⁸⁰ After a proposed amendment is filed with the secretary of state, it must be placed on the ballot in the next election held more than ninety days after the filing.⁸¹ The constitution requires that proposed amendments or revisions be published twice prior to the election in one newspaper of general circulation in each county.⁸² If the proposed amendment or revision is approved by the voters, it becomes effective on the first Monday after the first Tuesday in January following the election, or on a date specified in the amendment.⁸³

In 1986, the electorate voted for a constitutional amendment that set forth certain responsibilities of the attorney general and the supreme court regarding the initiative process.⁸⁴ The attorney general, as directed by general law, must request the opinion of the justices of the supreme court on the validity of initiative petitions.⁸⁵ Also, the amendment altered article V, section 3, which sets forth the jurisdiction of the supreme court, to include the court's new responsibility.⁸⁶

B. Statutory Provisions for Placing a Constitutional Initiative on the Ballot

Various Florida statutes set forth the process for filing initiative petitions.⁸⁷ The process can be time-consuming and expensive. A former

79. *Id.*

80. *See id.* art. XI, § 5.

81. *Id.* art. XI, § 5(a). However, the Legislature may move the proposal to an earlier election by a three-fourths vote of each house. *Id.*

82. *Id.* art. XI, § 5(b).

83. *Id.* art. XI, § 5(c).

84. A joint legislative resolution placed the original proposal on the ballot. *See INITIATIVES AND REFERENDA, supra* note 31. The amended section states:

The attorney general shall, as directed by general law, request the opinion of the justices of the supreme court as to the validity of any initiative petition circulated pursuant to Section 3 of Article XI. The justices shall, subject to their rules of procedure, permit interested persons to be heard on the questions presented and shall render their written opinion expeditiously.

FLA. CONST. art. IV, § 10.

85. *Id.*

86. *Id.* art. V, § 3(10) (requiring the Florida Supreme Court to render an advisory opinion).

87. FLA. STAT. §§ 15.21, 16.061, 99.097, 100.371, 101.161, 106.03 (1995).

secretary of state advises initiative committees to begin work at least four years before an election in order to have sufficient time to gather necessary signatures and deal with any legal challenges.⁸⁸ However, some committees have made ballot position in less time than two years.⁸⁹

The sponsor of an initiative amendment must register as a political committee prior to obtaining any signatures.⁹⁰ The sponsor of the petition prepares and the secretary of state approves the substance and ballot title of a proposed amendment.⁹¹ When a constitutional amendment gains ballot position, its substance must be written in "clear and unambiguous language" and in such a manner that a "yes" vote will indicate approval of the proposal and a "no" vote, rejection.⁹² The Department of State assigns a designating number to each initiative proposal and must furnish the number, ballot title, and substance of each amendment to the supervisor of elections.⁹³

The Department of State approves only the form of the petition.⁹⁴ The department staff checks the petition to determine whether the ballot title is fifteen words or fewer, whether the summary is seventy-five words or fewer,⁹⁵ and for the correct size and format of the petition.⁹⁶ Once the initiative committee registers with the Department and the Department approves the proposed amendment, the committee may begin circulating the petition to gather signatures.

Committees must gather enough signatures to equal eight percent of the votes cast in each of one-half of the state's congressional districts and in the state as a whole in the preceding presidential election.⁹⁷ In

88. Jim Smith, *So You Want To Amend the Florida Constitution? A Guide to Initiative Petitions*, 18 NOVA L. REV. 1509, 1511 (1994).

89. *Id.* at 1512.

90. FLA. STAT. § 106.03 (1995). This section requires that committees file a statement of organization which must include: the name and address of the committee; the names, addresses, and relationships of affiliated or connected organizations; the area, scope, or jurisdiction of the committee; the name, address, and position of the custodian of books and accounts; the name, address, and position of other principal officers; any issue or issues such organization is supporting or opposing; a statement as to whether the committee is a continuing one; a plan for the disposition of residual funds in the event of dissolution of the committee; and a listing of all banks, safe-deposit boxes, or other depositories used for committee funds. *Id.*

91. FLA. STAT. § 101.161(2) (1995); FLA. ADMIN. CODE ANN. r. 1S-2.009(1) (1995).

92. FLA. STAT. § 101.161(1) (1995). The substance of the amendment must be an explanatory statement of the chief purpose of the proposal which does not exceed 75 words. *Id.* The ballot title cannot exceed 15 words and commonly is used to refer to the measure. *Id.*

93. *Id.* § 101.161(2).

94. FLA. ADMIN. CODE ANN. r. 1S-2009(1) (1995) (providing for department review of the petition's form only and not its legal sufficiency).

95. FLA. STAT. § 101.161 (1995).

96. FLA. ADMIN. CODE ANN. r. 1S-2.009 (1995).

97. FLA. CONST. art. XI, § 3.

1994, a committee had to gather 429,428 signatures to place a proposal on the ballot.⁹⁸ The supervisor of elections verifies the petition signatures.⁹⁹ The time this process takes depends on the number of staff available for verification in each county; it frequently takes several weeks.¹⁰⁰

The initiative committee must pay the supervisor of elections ten cents for each signature checked or the actual cost of checking the signature, whichever is less.¹⁰¹ However, if the committee is unable to pay the charges without imposing an "undue burden" on its resources, the signatures are verified at no charge.¹⁰² The committee or an opponent of the petition may contest the verification results.¹⁰³

Upon certification of the necessary number and distribution of signatures of registered voters, the supervisor of elections forwards the respective certifications to the Division of Elections.¹⁰⁴ Initiatives appear on the ballot if they receive the requisite number of signatures at least ninety-one days before the general election and are not rejected by the court.¹⁰⁵

C. Judicial Review of Initiatives

When an initiative committee collects and obtains verification of at least ten percent of the required signatures from one-quarter of the congressional districts, the secretary of state submits the petition to the attorney general.¹⁰⁶ The attorney general then requests the supreme court's opinion about the petition's validity.¹⁰⁷ The court hears all

98. CITIZEN INITIATIVE, *supra* note 3, at 22 (compiling information from telephone interviews with election officials).

99. FLA. STAT. § 100.371(4), (5) (1995). Section 99.097, *Florida Statutes*, sets forth the process for verifying petition signatures. FLA. STAT. § 99.097 (1995). Section 99.097 is applicable to verifying signatures for petitions submitted to qualify candidates for public office and initiative petitions. *Id.* The supervisor of elections verifies signatures on either a name-by-name or random-sample basis, as the Department of State provides. *Id.* In 1978, however, the supreme court opined that the random sample verification was not applicable to initiative petitions. See *Let's Help Florida v. Smathers*, 360 So. 2d 494, 496 (Fla. 1978). The court held that it is necessary to verify each signature because the constitution mandates that at least eight percent of the electors sign an initiative petition. *Id.*

100. CITIZEN INITIATIVE, *supra* note 3, at 22.

101. FLA. STAT. § 99.097(4) (1995).

102. *Id.* The comptroller reimburses, from the General Revenue Fund, the supervisor of elections in each county for the ten cents or cost incurred in verifying signatures when a committee is unable to pay the charges because of an undue burden. *Id.*

103. *Id.* § 99.097(5).

104. *Id.* § 100.371(4).

105. *Id.* § 100.371(1).

106. *Id.* § 15.21(3).

107. FLA. CONST. art. IV, § 10; FLA. STAT. § 16.061 (1995). Section 16.061 states:

questions presented by interested parties before rendering its opinion.¹⁰⁸

The constitution specifies that a proposed amendment "shall embrace but one subject and matter directly connected therewith."¹⁰⁹ The Florida Supreme Court's first major interpretation of the single-subject requirement was in 1978.¹¹⁰ The court held that it would broadly construe restrictions on the initiative process so as not to infringe on the people's right to petition.¹¹¹ In 1984, in *Fine v. Firestone*,¹¹² the court receded from that ruling.

In *Fine*, the court determined that strict compliance with the single-subject provision in article XI, section 3 is essential to the validity of an initiative proposal.¹¹³ The court discussed the difference between initiative petitions for proposing amendments to the constitution and other amendment alternatives which have inherent protections against poor draftsmanship.¹¹⁴ Because initiatives are often poorly drafted, the court held that close judicial scrutiny of initiative proposals will protect the state constitution from ill-advised revision.¹¹⁵ The court strictly construed the single-subject provision of the constitution to ensure that the electorate has notice of specific changes contemplated by a proposed amendment.¹¹⁶

The court has developed a three-point inquiry on the single-subject issue. First, the court reviews the effect the amendment will have on the constitution as a whole.¹¹⁷ Second, it looks for violations of the single-subject rule with respect to the effect of the amendment on

The Attorney General shall, within 30 days after receipt of a proposed revision or amendment to the State Constitution by initiative petition from the Secretary of State, petition the Supreme Court, requesting an advisory opinion regarding the compliance of the text of the proposed amendment or revision with s. 3, Art. XI of the State Constitution and the compliance of the proposed ballot title and substance with s. 101.161. The petition may enumerate any specific factual issues which the Attorney General believes would require a judicial determination.

FLA. STAT. § 16.061 (1995).

108. FLA. CONST. art. IV, § 10.

109. *Id.* art. XI, § 3.

110. *Floridians Against Casino Takeover v. Let's Help Fla.*, 363 So. 2d 337 (Fla. 1978).

111. *Id.* at 340.

112. 448 So. 2d 984, 988 (Fla. 1984).

113. *Id.*

114. *Id.*; see also Cherie B. Albury, Comment, *Amendment Nine and the Initiative Process: A Costly Trip to Nowhere*, 14 STETSON L. REV. 349, 358 (1985).

115. *Fine*, 448 So. 2d at 988.

116. See *id.*; Albury, *supra* note 114, at 359.

117. *Fine*, 448 So. 2d at 988; see also Albury, *supra* note 114, at 359. When conflicts occur after the electorate passes an amendment, the courts must determine the ramifications of the amendment on the preexisting, discordant provisions. *Id.* The court makes these determinations without the benefit of hearings, debates, or other legislative history to assist them. *Id.*

various governmental functions.¹¹⁸ Third, the court determines whether the component parts or aspects of the proposed amendment have a natural relation and connection as a single dominant plan or scheme.¹¹⁹ According to *Fine*, a proposed amendment must have a logical and natural single purpose.¹²⁰ In 1993, the court opined that the reason for the single-subject restriction is to prevent "logrolling."¹²¹

An initiative may be removed from the ballot only if its challengers show that it is "clearly and conclusively defective."¹²² The court generally will find a proposal that fails to satisfy any part of the single-subject test to be "clearly and conclusively defective" and will remove the proposed amendment from the ballot.

In addition to the single-subject requirement, a proposal must give fair notice.¹²³ In 1980, the Legislature amended section 101.161 of the *Florida Statutes* to require a proposal's ballot title and summary be written in clear and unambiguous language.¹²⁴ This amendment was to ensure fair notice of a proposal's purpose and effect.¹²⁵ The court has construed fair notice to mean actual notice.¹²⁶

D. Initiatives That Made Ballot Position

Constitutional and statutory requirements prevent many initiatives from making ballot position. Since 1976, sixteen of ninety-four committees have collected the required number of signatures.¹²⁷ Several of the sixteen initiatives were subsequently removed from the ballot by the Florida Supreme Court prior to the general election.¹²⁸ Voters adopted seven of the eleven initiatives which gained ballot position

118. *Fine*, 448 So. 2d at 990 ("Such a violation has been determined to be a functional restraint, as opposed to a locational restraint; i.e., the amendment must affect only one function of government."); see also Albury, *supra* note 114, at 361-62.

119. *Fine*, 448 So. 2d at 990 (quoting *City of Coral Gables v. Gray*, 19 So. 2d 318, 320 (Fla. 1944) ("Unity of object and plan is the universal test.")).

120. *Id.*

121. Advisory Op. to the Att'y Gen. re Limited Marine Net Fishing, 620 So. 2d 997, 999 (Fla. 1993). Logrolling occurs when a proposed amendment combines unrelated provisions, some of which electors might support, in order to pass an otherwise disfavored provision. *Id.*

122. *Weber v. Smathers*, 338 So. 2d 819, 821 (Fla. 1976) (citing *Goldner v. Adams*, 167 So. 2d 565 (Fla. 1964)).

123. FLA. STAT. § 101.161 (1995).

124. *Id.*

125. *Grose v. Firestone*, 422 So. 2d 303, 305 (Fla. 1982).

126. *Askew v. Firestone*, 421 So. 2d 151, 154 (Fla. 1982).

127. CITIZEN INITIATIVE, *supra* note 3, at 20.

128. *Id.*

and rejected four.¹²⁹ Voters have adopted or disapproved the following initiatives in general elections:

<i>Year</i>	<i>Initiative</i>	<i>Action</i>
1976	Ethics in Government	Adopted
1978	Casino Gambling	Not adopted
1986	State Operated Lotteries	Adopted
1986	Casino Gambling	Not adopted
1988	Limitation of Non-Economic Damages	Not Adopted
1988	English Is the Official Language of Florida	Adopted
1992	Eight Is Enough	Adopted
1992	Save Our Homes	Adopted
1994	Limited Casinos	Not Adopted
1994	Limiting Marine Net Fishing	Adopted
1994	Revenue Limits	Adopted ¹³⁰

Citizen use of initiatives is increasing in popularity. For the 1994 general election, twenty-six constitutional initiative committees registered with the Division of Elections of the Department of State to express their intent to collect signatures for twenty-nine initiative petitions.¹³¹ Six of these committees gathered the requisite number of signatures for ballot position.¹³² The supreme court removed from the ballot six of the ten initiatives because they failed to meet constitutional or statutory requirements.¹³³ Of the four initiatives the supreme court approved, one did not meet the signature requirements.¹³⁴ Thus, only three initiatives were on the ballot in the 1994 general election.¹³⁵

To date, twenty-two initiative committees, some with multiple proposals, filed with the Department of State to attempt to gain ballot position for thirty-three initiatives in 1996.¹³⁶ Many committees that did not meet signature requirements before the 1994 election are

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.* The court removed the following initiatives: Laws Related to Discrimination, removed March 4, 1994; Save Our Everglades, removed May 26, 1994; Stop Early Release of Prisoners, removed July 7, 1994; Voter Approval of New Taxes, removed October 4, 1994; Tax Limitations, removed October 4, 1994; Property Rights, removed October 4, 1994. *Id.*

134. *Id.* The Funding for Criminal Justice initiative did not meet signature requirements. *Id.*

135. *Id.*

136. Interview with Division of Elections, Fla. Dept. of State (Feb. 7, 1996) (notes on file with Fla. S. Comm. on Gov't Reform & Oversight, Tallahassee, Fla.).

continuing their efforts for the 1996 ballot.¹³⁷ Some committees' petitions have been reviewed by the supreme court.¹³⁸ Some of these initiative petitions may be more appropriate as statutory amendments; however, the lack of a statutory initiative process in Florida precludes that choice.¹³⁹

A review of the initiative processes in other states reveals many similarities to and some significant differences from Florida's constitutional initiative process. This comparison is instructive when evaluating Florida's present process and suggests that Florida should consider devising a new statutory initiative process. Specifically, Florida should consider other states' signature requirements, restrictions, and voter approval provisions.¹⁴⁰ Likewise, scrutiny of indirect statutory initiative processes illustrates that this method provides increased public participation and encourages comment and debate.¹⁴¹

VI. THE PROCESSES IN OTHER STATES

Twenty-four states have some form of citizen initiative process for amending their constitutions or statutes.¹⁴² Fifteen of these states have an initiative process for amending their constitution and statutes.¹⁴³ Six states limit the initiative process to amending or enacting statutes.¹⁴⁴ Florida is one of three states that provide a method for citizens to amend the constitution only.¹⁴⁵ Conversely, the majority of states do not authorize *any* form of initiative.

The methods of amending constitutions or enacting statutes by initiative are characterized as either direct or indirect.¹⁴⁶ A direct method of amending the constitution or enacting statutes places an issue directly on the ballot once constitutional or statutory requirements are

137. *Id.*

138. See Advisory Op. to the Att'y Gen. re Casino Authorization, Taxation, and Regulation, 656 So. 2d 466 (Fla. 1995) (holding that proposal's title and summary were misleading and could not appear on the 1996 ballot); Advisory Op. to the Att'y Gen. re Fla. Locally Approved Gaming, 656 So. 2d 1259, 1260 (Fla. 1995) (holding that this casino gambling initiative met single-subject and title/summary requirements and that the proposal can appear on the ballot in 1996).

139. See CITIZEN INITIATIVE, *supra* note 3, at 72.

140. See *id.* at 73.

141. *Id.*

142. Neal, *supra* note 26, at 1. The following states have initiative processes: Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Maine, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. *Id.*

143. *Id.* (Arizona, Arkansas, California, Colorado, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, and South Dakota).

144. *Id.* (Alaska, Idaho, Maine, Utah, Washington, and Wyoming).

145. *Id.* The remaining two states are Illinois and Mississippi. *Id.*

146. *Id.*

met.¹⁴⁷ The public then adopts or rejects the provisions in a general election.¹⁴⁸ The indirect method generally allows the legislature to act on a proposal prior to its being put on the ballot.¹⁴⁹

The initiative processes vary in each state; however, there are certain aspects common to all. The processes generally require 1) committee registration and filing of the petition with a designated state official; 2) a review of the petition for compliance with statutory requirements including review of the proposal's language, ballot title, and summary; 3) signature of the petition by a specified percentage of voters; and 4) verification of the signatures by the state elections officer.¹⁵⁰

A. Constitutional Initiatives

Eighteen states have constitutional initiative processes.¹⁵¹ Of those, sixteen states allow for direct constitutional initiatives.¹⁵² Florida has a direct constitutional initiative process similar to other states' processes; these states' methods do not vary significantly.¹⁵³ Mississippi and Massachusetts are the only two states that have an indirect constitutional initiative process.¹⁵⁴ These indirect processes require that the proposal be submitted to the Legislature before being placed on the ballot. The Legislatures may then take one of several actions. Though the Mississippi Legislature can adopt, amend, or reject an initiative, the proposal still goes on the ballot.¹⁵⁵ If the Legislature alters the

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* at 2.

151. COUNCIL OF STATE GOV'TS, THE BOOK OF STATES 294 tbl. 5.15 (1994-95). These states are: Arizona, Arkansas, California, Colorado, Florida, Illinois, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, and South Dakota. *Id.*

152. *Id.* In addition to Florida, the states using a direct constitutional process are: Arizona, Arkansas, California, Colorado, Illinois, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, and South Dakota. *Id.*

153. See *infra* text accompanying notes 159-74.

154. COUNCIL OF STATE GOV'TS, *supra* note 151, at 294 tbl. 5.15.

155. MISS. CONST. art. 15, § 273. The Mississippi Constitution provides for legislative review of the initiative petition prior to the proposal being placed on the ballot. The Legislature may adopt, amend, or reject the proposal. *Id.*; see also CITIZEN INITIATIVE, *supra* note 3, at 28 (explaining Mississippi's process). Regardless of the legislative action, the initiative is placed on the ballot for the next general election. CITIZEN INITIATIVE, *supra* note 3, at 28. However, the Legislature may pass an amended version of, or an alternative to, the initiative. MISS. CONST. art. 15, § 273. Both the original initiative and the Legislature's proposed alternative initiative are placed on the ballot, along with a fiscal analysis of each proposal prepared by the legislative budget officer. *Id.* The Mississippi Constitution requires that 12% of the voters sign the initiative petition and limits the number of initiatives on one ballot to five. *Id.*

initiative, both proposals go on the ballot, and voters may choose between them.¹⁵⁶ The Massachusetts Legislature can prevent the initiative from reaching the ballot at all.¹⁵⁷ However, Massachusetts has the lowest percentage of signatures required for ballot placement—three percent of the votes cast for Governor in the previous election.¹⁵⁸ Therefore, Massachusetts' legislative latitude could be attributed to its low signature requirement and used as a filter for some unwise initiatives.

B. Statutory Initiatives

Twenty-one states have statutory initiative processes.¹⁵⁹ Fourteen of those states have direct methods¹⁶⁰ and nine have indirect methods.¹⁶¹ Utah and Washington have both indirect and direct statutory initiative processes.¹⁶² Two other states offer an indirect statutory initiative and a direct constitutional initiative.¹⁶³

156. *Id.*

157. MASS. CONST. art. 48, pt. 4, § 2 (requiring a 25% vote of both legislative houses in two consecutive sessions).

158. *Id.*

159. CALIFORNIA COMM'N ON CAMPAIGN FINANCING, DEMOCRACY BY INITIATIVE—SHAPING CALIFORNIA'S FOURTH BRANCH OF GOVERNMENT 359 (1992) [hereinafter DEMOCRACY BY INITIATIVE]. These states are Alaska, Arizona, Arkansas, California, Colorado, Idaho, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming. *Id.*

160. *Id.* (Arizona, Arkansas, California, Colorado, Idaho, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Washington, and Wyoming).

161. COUNCIL OF STATE GOV'TS, *supra* note 151, at 294 tbl. 5.15 (Alaska, Maine, Massachusetts, Michigan, Nevada, Ohio, Utah, Washington, and Wyoming). The District of Columbia also has an indirect statutory process. *Id.*

162. UTAH CONST. art. VI, § 1; WASH. CONST. art. 1, § 1(a); see also DEMOCRACY BY INITIATIVE, *supra* note 159, at 359. Utah statutes provide for submission to the Legislature of any measure accompanied by the signatures of 5% of the voters, 10 days prior to convening of the Legislature. UTAH STAT. § 20-11-2 (1995). If the measure is not enacted by the Legislature, signatures totalling an additional 5%, for a total of 10% of the votes cast for governor in the preceding election, must be collected to submit the proposal to the voters. *Id.* However, filing a petition with the signatures of 10% of the voters gets the measure directly to the voters. UTAH STAT. § 20-11-3 (1995). Unlike Utah, Washington has no provision for a constitutional initiative. WASH. CONST. art. 1, § 1(a) (1994). Both the direct and indirect statutory initiatives require the signatures of 8% of the voters prior to placement on the ballot. *Id.* If an indirect initiative is adopted by the Legislature, it still goes on the ballot as a referendum. *Id.*

163. MICH. CONST. art. 2, § 9; NEV. CONST. art. 29, § 2; see also DEMOCRACY BY INITIATIVE, *supra* note 159, at 359. The Michigan and Nevada constitutions provide for legislative review of the proposal. MICH. CONST. art. 2, § 9; NEV. CONST. art. 29, § 2. The Michigan Legislature may propose an alternative measure. MICH. CONST. art. 2, § 9. The Michigan Constitution provides that if the Legislature does not enact or reject a proposed measure within 40 session days, the citizens vote on the initiative measure and any proposed alternative measure. *Id.*

The Nevada Constitution requires a committee to file its petition within 30 days prior to the legislative session. NEV. CONST. art. 29, § 2. If the Legislature fails to act within 40 days, the petition is submitted to the voters. *Id.* If the Legislature enacts the proposed amendment as a statute, it becomes law, but subject to referendum. *Id.*

Several states with indirect methods allow their legislatures to propose alternative measures to a statutory initiative. For example, the Maine Constitution establishes an indirect statutory initiative and provides that the Legislature may enact the initiative measure as is or propose an alternative.¹⁶⁴ Alaska and Wyoming have a modified version of an indirect statutory initiative procedure.¹⁶⁵ These constitutions provide that one legislative session must fall between the filing and balloting of an initiative.¹⁶⁶ Enactment of substantially the same measure by the Legislature terminates the measure's appearance on the ballot.¹⁶⁷ Some states require that a statutory initiative be submitted to the legislature and, if not adopted, that the committee obtain more signatures prior to the proposal's placement on the ballot.¹⁶⁸

Eleven states permit their legislatures to amend or repeal statutory initiatives by a simple majority vote of both houses.¹⁶⁹ However, six states impose limited restrictions on legislative changes.¹⁷⁰ In those states, generally, amendment or repeal is prohibited for two to three years after enactment of a statutory initiative.¹⁷¹ Four states impose major restrictions on legislative amendments.¹⁷² California, for example, requires that any effort to amend a statutory initiative must be approved by the voters.¹⁷³ Michigan, Arkansas, and North Dakota require a two-thirds to three-fourths vote of the Legislature for amendment.¹⁷⁴

C. Signature Requirements

Signature requirements vary throughout the states. Generally, constitutional initiative petitions need more signatures than statutory

164. MAINE CONST. art. 4, pt. 3, § 18.

165. ALASKA CONST. art. XI, § 1; WYO. CONST. ch. 24, § 22-24-101.

166. ALASKA CONST. art. XI, § 4; WYO. CONST. ch. 24, § 22-24-119.

167. *Id.*

168. See OHIO CONST. art. II, § 1b; MASS. CONST. art. 48, pt. V, § 1. The Ohio Constitution provides that the Legislature receives an initiative petition after it is signed by 3% of the voters. OHIO CONST. art. II, § 1b. The citizens vote on either the original measure or the legislatively-amended measure if the Legislature fails to act within 4 months and the additional 3% of voters sign the petition. *Id.*

The Massachusetts Constitution provides that the Legislature gets a proposal after 3% of the registered voters sign the petition. MASS. CONST. art. 48, pt. V, § 1. If the Legislature fails to act within the allotted time, and if the signatures of an additional 1/2% of the voters are submitted, the measure and any alternatives proposed by the Legislature are put before the voters. *Id.*

169. DEMOCRACY BY INITIATIVE, *supra* note 159, at 366.

170. *Id.*

171. See *id.*

172. *Id.* (Arkansas, California, Michigan, and North Dakota).

173. *Id.*

174. *Id.* In North Dakota, this requirement is necessary only for the first seven years after the initiative's enactment. *Id.*

initiative petitions.¹⁷⁵ Of the fifteen states that have both constitutional and statutory initiative processes, thirteen require more signatures for constitutional initiatives than for statutory initiatives.¹⁷⁶ Four states require approximately twice as many signatures for constitutional amendments as for statutory amendments.¹⁷⁷ Seven states require from approximately twenty-five to fifty percent more signatures for constitutional amendments than statutory amendments.¹⁷⁸

The basis for signatures is usually the total number of eligible voters,¹⁷⁹ the total number of voters who voted in the last gubernatorial election,¹⁸⁰ or the total number of voters who voted in the last presidential election.¹⁸¹ Requirements based on the total number of

175. COUNCIL OF STATE GOV'TS, *supra* note 151, at 296-97 tbl. 5.17.

176. *Id.*

State	Constitutional	Statutory	Vote Based Upon Percent of:
Arizona	15%	10%	total votes cast for governor in last election
Arkansas	10%	8%	total votes cast for governor in last election
California	8%	5%	total votes cast for governor in last election
Colorado	5%	5%	total votes cast for the office of Secretary of State
Massachusetts	3%	3%	total votes cast for governor in last election
Michigan	10%	8%	total votes cast for governor in the last election
Missouri	8%	5%	total votes cast for governor in last election
Montana	10%	5%	total votes cast for governor in last election
Nebraska	10%	7%	total eligible voters
Nevada	10%	10%	total voters at the last election
North Dakota	4%	2%	resident population
Ohio	10%	3%	total votes cast for governor in last election
Oklahoma	15%	8%	voters for the office receiving highest number of votes in last election
Oregon	8%	6%	total votes cast for governor in last election
South Dakota	10%	5%	total votes cast for governor in last election

Id.

177. *Id.* (Montana, North Dakota, Oklahoma, and South Dakota).

178. *Id.* (Arizona, California, Missouri, Nebraska, Michigan, Oregon, and Arkansas).

179. *Id.* (i.e., Arkansas and Nebraska).

180. *Id.* (Arizona, Arkansas, California, Illinois, Massachusetts, Michigan, Mississippi, Missouri, Montana, Ohio, Oregon, and South Dakota).

181. *Id.* (Florida).

eligible voters makes the percentage more difficult to attain. For example, in Florida, only sixty-five percent of the eligible (registered) voters actually voted in the 1994 general election.¹⁸² Therefore, the signature requirement is easier to satisfy. In comparison, North Dakota requires four percent of the entire resident population to sign a petition.¹⁸³ Six states, including Florida, require that signatures be gathered from around the state.¹⁸⁴ These requirements specify that signatures must be from voters registered in multiple counties or from congressional or state legislative districts.¹⁸⁵

D. Restrictions on Initiatives

Several states restrict the areas of law that initiatives may amend.¹⁸⁶ For example, the Alaska Constitution provides that an initiative cannot dedicate revenues, make or repeal appropriations, create courts, define jurisdiction of courts, prescribe court rules, or enact local or special legislation.¹⁸⁷ The Illinois Constitution allows amendment only to the section in the constitution governing the legislative branch.¹⁸⁸ The Oklahoma Constitution provides that when voters reject measures through initiative and referendum, such measures cannot be proposed again within three years without signatures of at least twenty-five percent of the state's voters.¹⁸⁹

States commonly use the single-subject limitation, as Florida does. Thirteen of the eighteen states with constitutional initiative processes and twelve of the twenty-two states with statutory initiatives impose a single-subject restriction.¹⁹⁰

E. Voter Approval

In most states, a vote of a simple majority can enact citizen initiative proposals. Four states require some type of super-majority of the

182. Division of Elections Interview, *supra* note 7.

183. COUNCIL OF STATE GOV'TS, *supra* note 151, at 297 tbl. 5.17.

184. *Id.* (Massachusetts, Missouri, Montana, Nebraska, Nevada, and Ohio).

185. *Id.*

186. In Wyoming, initiatives may not dedicate revenues, make or repeal appropriations, create courts, or enact local or special legislation. WYO. STAT. § 22-24-101 (1993). Similarly, the Massachusetts Constitution prohibits citizen initiative proposals relating to religion, the appointment of judges, reversal of judicial decisions, powers and creation of courts, local matters, and specific appropriations. MASS. CONST. art. 48, pt. V, § 2. The Missouri Constitution does not permit appropriation initiatives unless new sources of revenue are also included. MO. CONST. art. III, § 51. The Ohio Constitution does not permit initiatives that amend the state's property taxation method. OHIO CONST. art II, § 1(c).

187. ALASKA CONST. art. XI, § 7.

188. ILL. CONST. art. XIV, § 3.

189. OKLA. CONST. art. V, § 6.

190. DEMOCRACY BY INITIATIVE, *supra* note 159, at 362.

total votes cast at that election or a previous election.¹⁹¹ The Nebraska and Massachusetts constitutions provide that a majority vote may adopt an initiative if the majority totals at least thirty or thirty-five percent, respectively, of the total votes cast in the election.¹⁹² Nevada requires a majority vote in two consecutive elections to approve an initiative.¹⁹³ Illinois requires at least a three-fifths majority vote to approve a constitutional amendment.¹⁹⁴

F. *The California Experience*

California has had an initiative process since 1911.¹⁹⁵ The prevalent use of California's initiative process is an interesting case study and illustrates the overall concerns regarding initiatives.¹⁹⁶ Observers of the California process fear that initiatives have "shifted the policymaking burden to the voters, leaving them overwhelmed by the growing number of measures on the ballot, confused by poor drafting, [and] deceived by misleading campaigns"¹⁹⁷

Constitutional and statutory initiatives are a significant generator of California's policy and are "exerting a major impact on the life of the state."¹⁹⁸ The number of initiatives California citizens have circulated and adopted has increased fivefold since the 1960s.¹⁹⁹ In the past ten years, voters have approved more than twenty-five initiatives at the polls.²⁰⁰ Those initiatives have instituted policy in important areas such as education, insurance, taxes, the environment, rent control, and crime prevention.²⁰¹ Some initiatives are highly controversial; for example, Proposition 187, which was adopted in the 1994 general election, denies public education, non-emergency health, and public social services to those who are not legally in this country.²⁰² If

191. *Id.* at 366.

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.* at 5. California requires signatures of 8% of the registered voters for constitutional initiatives and 5% of that same group for statutory initiatives. COUNCIL OF STATE GOV'TS, *supra* note 151, at 296 tbl. 5.17.

196. See DEMOCRACY BY INITIATIVE, *supra* note 159, at 2.

197. *Id.*

198. *Id.* at 8.

199. *Id.*

200. The National Conference on State Legislatures states that, since 1984, the electorate decided on 61 initiatives, and adopted 11 of 26 constitutional initiatives and 14 of 35 statutory initiatives.

201. *Id.* at 1.

202. Telephone Interview with Melissa Melendez, Cal. Senate Off. of Research (Oct. 21, 1995) (notes on file with Fla. S. Comm. on Gov't Reform and Oversight, Tallahassee, Fla.) [hereinafter Melendez Interview].

California's trend is any predictor of the nation's future, other states will begin to see the emergence of "democracy by initiative as a new form of twenty-first century governance."²⁰³

Further, spending on initiatives has risen. In 1976, the median cost to get an initiative on the ballot was approximately \$45,000.²⁰⁴ In the 1990s, the median cost of an initiative has exploded to more than \$1 million.²⁰⁵ The cost of placing initiatives on the ballot has created an initiative industry in California to raise funds and gather signatures.²⁰⁶ This development raises questions about the true "grassroots" nature of initiatives.²⁰⁷

The counter-initiative is a new strategy for undermining an initiative proposal and is gaining popularity in California.²⁰⁸ Instead of opposing a measure by advocating a negative vote, opponents run an alternative measure.²⁰⁹ A problem develops when voters approve two or more initiatives addressing conflicting propositions.²¹⁰ This problem occurs in other states; however, most other states prescribe that the proposal with the most votes prevails.²¹¹ Conflicting propositions inevitably confuse California voters and complicate the court's job when it must determine which elements in the proposals conflict.

Critical problems confront California's initiative process.²¹² Various California commissions have studied and proposed reforms to the process.²¹³ These commissions recommended that it should be harder to amend the constitution and that initiatives should be approved by a three-fifths vote.²¹⁴ They also recommended that the Legislature hold public hearings on each initiative qualified for the ballot and that proponents be allowed to amend their initiative after the legislative hearing.²¹⁵ Public hearings would identify drafting problems, constitutionality issues, costs of implementation, and other issues that could be resolved by modification of the proposed initiative.²¹⁶ Further, the commissions recommended that the process be revised to

203. DEMOCRACY BY INITIATIVE, *supra* note 159, at 1.

204. *Id.* at 13.

205. *Id.*

206. *Id.* at 15.

207. *Id.*

208. *Id.* at 363.

209. *Id.*

210. *Id.*

211. *Id.*

212. *Id.* at 3.

213. *Id.*

214. *Id.* at 4.

215. *Id.*

216. *Id.*

allow amendments to statutory initiatives without the approval of the electorate.²¹⁷ To date, California has not adopted these revisions.²¹⁸

G. Florida Compared with Other States

Florida is one of only three states that allow constitutional initiatives without allowing statutory initiatives.²¹⁹ The other two states in this category, Illinois and Mississippi, have more restrictive initiative processes than Florida.²²⁰

Of the eighteen states with constitutional initiative processes, ten states require more signatures than Florida,²²¹ four other states require approximately the same number,²²² and only three states require fewer.²²³ Many states, including Florida, limit the time permitted to circulate petitions to gather the requisite number of signatures.²²⁴ The shortest period for circulation is in Oklahoma—ninety days.²²⁵ California allows 150 days for circulating petitions, and several other states allow periods ranging from six months to two years.²²⁶ Florida allows the longest period of any state—four years.²²⁷

Although Florida has only a constitutional initiative process, its initiative process shares many similarities with the processes of other states. Most states have a single-subject limitation²²⁸ and require some form of disclosure of initiative contributions.²²⁹ Most states also require pre-election judicial review of the initiative's procedural compliance.²³⁰ All states require review and approval of the ballot title

217. *Id.* California is the only state that does not permit amendment of statutory initiatives without the general electorate's approval unless the initiative specifically allows legislative amendment. *Id.* at 366.

218. Melendez Interview, *supra* note 202.

219. COUNCIL OF STATE GOV'TS, *supra* note 151, at 297 tbl. 5.17.

220. ILL. CONST. art. XIV, § 3. Illinois has a direct constitutional initiative process. However, initiative amendments may propose changes only to article IV of the Illinois Constitution, which governs the legislative branch. *Id.* Mississippi has an indirect constitutional method; the Legislature reviews all proposals. MISS. CONST. art. XV, § 273. All proposals ultimately get ballot position, but only after public hearings, analysis, and an opportunity for the Legislature to propose alternative measures. *Id.*

221. COUNCIL OF STATE GOV'TS, *supra* note 151, at 296 tbl. 5.17.

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. FLA. STAT. § 100.371(2) (1995); DEMOCRACY BY INITIATIVE, *supra* note 159, at 130.

228. DEMOCRACY BY INITIATIVE, *supra* note 159, at 362.

229. *Id.* at 361.

230. *Id.* at 362.

and summary.²³¹ Also, in general, a simple majority vote can adopt an initiative.²³²

VII. ISSUES REGARDING THE INITIATIVE PROCESS

Initiatives and their effect on democracy are likely to continue to be a subject of national debate as they become a more prevalent method of determining government policy in the states. The general question arises whether initiatives are an infringement on the representative form of government or a necessary avenue of direct legislation for the people when the elected officials either cannot, or will not, pass laws which reflect the wishes of the people.²³³ A previous joint committee study explained:

Initiative . . . procedures raise significant questions about the type of democracy that should be encouraged. Representative democracy, as designed in the United States, is based on a division of power. Direct democracy combines power and, as such, raises the possibility that democratic values which secure rights for minorities and those adhering to life styles and beliefs different from those of the majority will be undermined. . . . For every negative claim, there is a positive justification for citizen lawmaking. . . . [Some] argue initiatives and referenda help make elected officials more accountable and serve as a vital safety valve for issues that might otherwise fracture legislative bodies.²³⁴

In reference to constitutional initiatives specifically, one scholar states that "[t]he principal advantage of the constitutional initiative is its availability as a popular weapon to counter domination of legislative assemblies by pressure groups that oppose constitutional change."²³⁵ Constitutional initiatives enable citizens to "propos[e] alterations without depending on existing governmental institutions."²³⁶ However, critics argue that the constitutional initiative process "encourages proposals by selfish interests, that it may result in the addition of more statutory content to the organic law, that many popularly initiated measures cannot be integrated into the existing legal structure, that proposals are often poorly drafted, and that they further lengthen the ballot."²³⁷

231. *Id.*

232. *Id.*

233. See INITIATIVES & REFERENDA, *supra* note 31, at 158-160.

234. *Id.*

235. STURM, *supra* note 11, at 26.

236. *Id.*

237. *Id.* at 27.

Nonetheless, many Floridians have indicated a desire to retain the constitutional initiative process.²³⁸ However, many concerns have been identified with regard to Florida's current constitutional initiative process.²³⁹ These issues warrant continued review and potential redress.²⁴⁰

A. *Preserving the Sanctity of the Constitution*

Citizen initiatives present conflicting political principles. One such principle is that a constitution belongs to the people, and the people should not have to rely on methods that may frustrate their will to alter the document.²⁴¹ However, a second notion is "that the state constitution is the heart of the social contract" and, if it is to work properly, the constitution cannot be altered to the point that government does not function properly.²⁴² Thus, a primary concern of the constitutional initiative process is that the constitution should contain fundamental principles of policy and be difficult to amend.

Constitutions are generally considered timeless documents that should be drafted in such a way as to need very little modification. "The Constitution is a document that should transcend changes in the political scene, hot issues, and capricious motives."²⁴³ It is a document that is to "provide stability in the law and society's consensus on the general fundamental values."²⁴⁴ Statutory law, however, is intended to be easily modified whenever the needs of the state and its people change.

There is common agreement that state constitutions should be brief, limited to fundamentals, and avoid all legislative matters.²⁴⁵ Treating a subject in a state constitution, as opposed to codifying it in statutory law, places the matter beyond change by normal lawmaking processes and at the highest level of the legal authority of the state.²⁴⁶ The

238. See CITIZEN INITIATIVE, *supra* note 3, at 35-52.

239. *Id.* at 54. Constitutional scholars, previous initiative committee members, interested parties, and state officers identified these concerns in a survey about Florida's initiative process. *Id.* at 33-52.

240. *Id.* at 33-52.

241. *Id.* at 54 (quoting Professor Thomas C. Marks, Jr., Stetson University College of Law).

242. *Id.*

243. Nancy Maggiamo, *League Litigates on a Constitutional Question*, FLA. VOTER, Fall 1994.

244. Advisory Op. to the Att'y Gen. re Limited Marine Net Fishing, 620 So. 2d 997, 1000 (Fla. 1993).

245. Frank P. Grad, *The State Constitution: Its Function and Form for Our Time*, 54 VA. L. REV. 928, 942-47 (1968); FLA. ADVIS. COUNCIL INTERGVTL. REL., M-59 STATE CONSTITUTIONAL LAW CASES AND MATERIALS 28 (1988) [hereinafter STATE CONSTITUTIONAL LAW CASES].

246. STATE CONSTITUTIONAL LAW CASES, *supra* note 245, at 29.

enduring quality of a provision of the state constitution may protect a desirable policy from unnecessary changes by the legislature, or it may delay or prevent change from policy which is no longer responsive to the state's current needs for new and better policy.²⁴⁷

To preserve the sanctity of the Florida Constitution, the Florida Legislature could propose changes to increase the percentage of signatures required to place an initiative on the ballot, restrict the subject matter of initiatives, or require a larger majority for voter approval. Also, instituting a statutory initiative process would decrease the relative number of constitutional amendments and revisions.

1. *The Constitution Should Be Difficult To Amend*

Providing citizens an opportunity to amend the constitution by initiative may be desirable public policy; however, the constitution should not be easy to amend.²⁴⁸ The constitution "set[s] society's basic legal parameters" by defining legal rights.²⁴⁹ "To be effective, constitutions must be difficult to change. Yet constitutions must be capable of change . . . to address the important issues of the day."²⁵⁰

Florida provides five methods for amending the constitution; this is a higher number than any other state. Since the constitution was revised in 1968, ninety-seven amendments have been proposed, and voters have adopted seventy-three of them.²⁵¹ Voters adopted seven of eleven citizen initiative proposals which made ballot position.²⁵²

For 1994, twenty-nine initiatives were filed with the Division of Elections.²⁵³ This is the largest number of initiatives ever circulated in one election period in Florida.²⁵⁴ Other states also have experienced a tremendous increase in the number of initiative petitions for constitutional or statutory amendment.²⁵⁵ In the 1994 general elections, voters in twenty-two states considered seventy-three amendments.²⁵⁶ This number reflects only those initiatives which met all constitutional and

247. *Id.*

248. CITIZEN INITIATIVE, *supra* note 3, at 35-52 (including survey responses about the initiative process from selected scholars, former members of a Constitution Revision Commission, and other interested parties).

249. Stephen Maher, *The Conference on the Florida Constitution*, 68 FLA. B. J. 66 (1994).

250. *Id.*

251. CITIZEN INITIATIVE, *supra* note 3, at 55.

252. *Id.*

253. *Id.* at 54.

254. *Id.*

255. DEMOCRACY BY INITIATIVE, *supra* note 159, at 8.

256. Press Release from Public Affs. Research Inst. N.J., Inc., Princeton (March 13, 1995) (entitled *\$140 Million Spent on Citizen Initiative Questions*) (on file with Fla. S. Comm. on Gov't Reform & Oversight, Tallahassee, Fla.) [hereinafter Press Release].

statutory requirements.²⁵⁷ Many other initiatives were attempted. Special interest groups have become very effective in gathering the requisite number of signatures to place initiatives on the ballot.²⁵⁸ The Florida experience and that of other states suggests that amendments will be proposed to the Florida Constitution with increasing frequency.²⁵⁹ Judge Thomas Barkdull stated that, based on the experience of other states, Florida may be on the "verge of getting into a position where every two years [voters] will have four or five petitions to consider."²⁶⁰ He further speculated that future constitution revision commissions may consider adopted measures "sacrosanct" and may be reluctant to revise the amendments because of a perception that they are a mandate from the people.²⁶¹

Furthermore, in 1994, the citizenry voted in favor of an amendment to the constitution which revised the initiative process to permit revenue-related initiatives to address more than a single subject. This new amendment could have far-reaching, un contemplated effects.²⁶² It is likely to result in an increase in the number of initiatives which will make ballot position. Consequently, Florida should consider options to make it more difficult to amend the constitution by initiative.

2. *Suggested Methods of Preservation*

The process to amend the constitution could be made more difficult by requiring more signatures than the current eight percent. Many states require more signatures than Florida and limit the time for petition circulation to gather signatures.²⁶³ Another option would be to make certain provisions in the constitution unavailable for amendment by initiative.²⁶⁴ The state could determine that certain issues are

257. *Id.*

258. CITIZEN INITIATIVE, *supra* note 3, at 44 (citing survey response from Sally Spener, Executive Director of Common Cause Florida).

259. *Id.* at 34-52. In fact, this same concern extends to proposals by the Legislature, the Taxation and Budget Reform Commission, and, perhaps to a lesser extent, by the Constitution Revision Commission. *Id.*

260. *Id.* at 55 (quoting Barkdull, Thomas H., J., Fla. 3d Dis. Ct. App., Member, 1968 and 1978 Constitution Revision Commissions). Judge Barkdull was in attendance at the Leroy Collins Center for Public Policy forum on Florida constitutional issues in Tallahassee, Florida, on March 6, 1995. *Id.* The Center conducted the forum to initiate discussion and thought in anticipation of the 1998 Constitution Revision Commission. *Id.*

261. *Id.*

262. *Id.* at 35-52 (reporting survey indications of much support for the single-subject limitation, although some persons are dissatisfied with the court's interpretation of the provision).

263. COUNCIL OF STATE GOV'TS, *supra* note 151, at 296; *see also* discussion *supra* part VI.C. (discussing other states' signature requirements).

264. *See* CITIZEN INITIATIVE, *supra* note 3, at 42; *see, e.g.,* ALASKA CONST. art. XI, § 7; Wyo.

fundamental to the state's welfare and safety and restrict initiatives from amending those areas.²⁶⁵

A third option would be to require a super-majority vote for passage. The current initiative process requires for passage only a simple majority of those voting.²⁶⁶ In 1995, bills were filed in the Florida House of Representatives and Senate which would have required a two-thirds or three-fifths vote of the electors for the adoption of constitutional amendments.²⁶⁷ These bills did not pass.

Any proposal to make it more difficult to amend the constitution would require a constitutional amendment approved by the electors. The electorate may not favor an amendment to limit citizen access to direct democracy. Yet, some may desire to protect the integrity of their constitution and may weary of others' attempts to amend it, especially if numerous proposals make it more demanding and difficult for citizens to stay informed about amendment issues. If citizens have an alternative avenue to direct democracy, they may approve restricting, and making more difficult, amendments to the constitution. A statutory initiative process would help preserve the integrity of the constitution and provide citizens an alternative method to affect policy.²⁶⁸

B. Procedural Concerns Regarding the Initiative Process

There are other issues surrounding Florida's constitutional initiative process that deserve evaluation. These areas of concern are 1) funding of initiative committees, 2) petition signature procedures, 3) judicial review procedures, and 4) public awareness of initiative effect.

1. Funding of Initiative Committees

Some of the strongest claims against initiatives focus on their vulnerability to special interests and the inability of citizens to make

STAT., § 22-24-101 (1994); ILL. CONST. art. XIV, § 3. In Alaska and Wyoming, for example, the constitutions prohibit initiatives from dedicating revenues, making or repealing appropriations, creating courts, or revising the judicial process. ALASKA CONST. art. XI, § 7; WYO. STAT., § 22-24-101 (1994). In Illinois, initiatives may only amend constitutional provisions governing the Legislature. ILL. CONST. art. XIV, § 3. Some similar restrictions on initiative amendments may be appropriate for Florida. CITIZEN INITIATIVE, *supra* note 3, at 42.

265. CITIZEN INITIATIVE, *supra* note 3, at 42 (Professor Joseph W. Little, University of Florida College of Law, suggests restrictions on initiatives that affect the state's police or regulatory powers).

266. FLA. CONST. art. XI, § 3.

267. Fla. SJR 784 (1994); Fla. SJR 1730 (1994); Fla. HJR 383 (1994).

268. CITIZEN INITIATIVE, *supra* note 3, at 6.

informed choices about the issues.²⁶⁹ Much concern surrounds large contributions paid by special interest groups.²⁷⁰ According to the Division of Elections of the Department of State, committees attempting to place initiatives on the ballot in 1994 received contributions as high as \$16.5 million.²⁷¹ Currently, there are no limits on contribution amounts and only a statutory requirement that all contributions be reported.²⁷² Paradoxically, initiatives were originally conceived for grassroots groups to circumvent legislative bodies which citizens perceived to be overly influenced by special interests.²⁷³

In 1992, the California Commission on Campaign Financing issued a study declaring that "ballot access today is less a drive for broad-based citizen support than an exercise in fundraising strength."²⁷⁴ The study notes that volunteer signature gatherers have largely been replaced with expensive, paid circulators and that for-profit signature-gathering firms advertise that they will "guarantee ballot qualification of any initiative—at a price."²⁷⁵

Some argue that special interests have a significant influence on citizen campaigns.²⁷⁶ In 1994, campaigns for or against adoption of seventy-three citizen initiatives in twenty-two states consumed approximately \$140 million.²⁷⁷ Voters decided two-thirds of those initiatives in favor of the side reporting the highest spending.²⁷⁸ In Florida, the Proposition for Limited Casinos Committee received contributions in excess of \$16.5 million and advertised extensively to

269. See *id.* at 58. Former Governor Reuben Askew recently highlighted this issue at a conference sponsored by the Leroy Collins Center for Public Policy. Former Governor Askew lamented a concern that "anyone with enough money may put an issue on the ballot." This sentiment is shared by many.

270. CITIZEN INITIATIVE, *supra* note 3, at 46. Nancy Maggiasco, President, League of Women Voters of Fla., stated that there is concern about the growing influence of monied interests such as the "gambling interest and U.S. Sugar who clearly financed amendments which would personally benefit their industries." *Id.*

271. See *id.* at 59. Proposition for Limited Casinos (\$16.5 million cash and \$335,701 in-kind contributions); Florida Locally Approved Gambling (\$3.1 million cash and \$1.1 in-kind contributions); Save Our Sealife (\$1.4 million cash and \$303,349 in-kind contributions); Save Our Everglades (\$1.3 million cash and \$9,679 in-kind contributions); Home Rule Committee (\$1.3 million cash and \$170,275 in-kind contributions); Citizens for a Safe Florida (\$1.02 million cash and \$124,897 in-kind contributions); Tax Cap Committee (\$62,640 cash and \$1.26 million in-kind contributions). *Id.*

272. FLA. STAT. § 106.08 (1995).

273. See CITIZEN INITIATIVE, *supra* note 3, at 40, 59 (quoting Professor Joel Mintz, Nova Southeastern University Law Center); *id.* at 42 (quoting Professor Joseph W. Little, University of Florida College of Law).

274. DEMOCRACY BY INITIATIVE, *supra* note 159, at 15.

275. *Id.* at 145.

276. INITIATIVES & REFERENDA, *supra* note 31, at 6-7.

277. Press Release, *supra* note 256.

278. *Id.*

promote the casino initiative.²⁷⁹ However, despite generating the highest contributions, the initiative did not pass. This suggests that financing alone does not ensure passage of an initiative in Florida.

Nevertheless, it appears that adequate fundraising may at least assure the collection of the requisite number of signatures. To counteract the effects of paid advertising, Florida could institute a process for public hearings on initiatives and provide for the dissemination of unbiased summaries of initiatives.²⁸⁰ In addition, Florida could place a ceiling on contributions made by a single individual or group to a particular committee—a ceiling similar to the limitations placed on contributions to political candidates.²⁸¹ These are options which Florida should review further.

2. Initiative Petition Signatures

To obtain ballot position, sponsors must gather valid signatures equal to eight percent of the preceding presidential vote in Florida.²⁸² Based on this requirement, an initiative committee had to obtain 429,428 signatures to gain position on the 1994 ballot.²⁸³ Problems exist with the various aspects of the initiative signature process. These concerns include the effect of paid signature gatherers, signature verification, and petition deadlines.

In addition, there are concerns about the financial aspects of the signature process. Some committees fail to pay for signature verification, while administrative costs associated with processing the initiative petitions are increasing.²⁸⁴ Supervisors of elections reported additional administrative costs associated with the initiative petitions filed in 1994; such costs ranged from a low of \$100 in a small county to more than \$100,000 in a larger county.²⁸⁵ These additional costs consisted mainly of salaries paid to temporary help and overtime for permanent employees for signature verification.²⁸⁶

279. *Id.* (reporting that \$16.5 million spent by the Proposition for Limited Casino Committee was the most spent in 1994, and noting that the most ever spent was \$35 million in 1988 for California's Proposition 104 to impose no-fault automobile insurance).

280. DEMOCRACY BY INITIATIVE, *supra* note 159, at 21. The California report recommends holding public hearings on the merits of any initiative once a committee collects 25% percent of the required signatures. *Id.* Several states issue pamphlets with unbiased summaries of initiatives. *Id.* at 364. However, Florida would incur significant costs conducting hearings and printing publications. *Id.*

281. CITIZEN INITIATIVE, *supra* note 3, at 59.

282. FLA. CONST. art. XI, § 3 (requiring signatures of 8% of the electors in one-half of the state's congressional districts and in the state as a whole on a petition).

283. CITIZEN INITIATIVE, *supra* note 3, at 62.

284. *Id.*

285. *Id.* at 62.

286. *Id.*

a. Paid Signature Gatherers

Many individuals and groups have recommended that the Legislature preclude initiative committees from paying signature gatherers.²⁸⁷ The recommendation results from a concern that paid signature gatherers "pressure" individuals to sign petitions which they may not understand.²⁸⁸ As well, paying signature gatherers per signature may encourage fraudulent signatures.²⁸⁹

Signature gathering can be lucrative. Some initiative committees pay signature gatherers up to \$2.50 per signature.²⁹⁰ An average worker can collect 200 signatures per day, while energetic gatherers can collect up to 500.²⁹¹ Allegedly, the increase in the cost of paying signature gatherers alone ensures that \$1 million is needed to finance an initiative.²⁹² The Safe Bet for Florida initiative committee reportedly spent more than \$1.4 million to hire a company to gather signatures for its effort.²⁹³

The Supervisor of Elections for Collier County indicated that there were numerous petitions submitted with high rates of signature invalidity.²⁹⁴ One initiative committee delivered 10,087 petition signatures, of which only 697 were valid.²⁹⁵ The supervisor was able to demonstrate that someone copied data from telephone books.²⁹⁶ The supervisor forwarded the information to the State Attorney in Collier County.²⁹⁷ Fraud was also widespread in Pinellas County last election year.²⁹⁸ One initiative petition included names of deceased persons.²⁹⁹

Many supervisors of elections have noted a correlation between fraudulent signatures and paid signature gathering.³⁰⁰ Supervisors generally agree that paid signature gathering provides an incentive for

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.* at 62.

291. *Id.* (reporting information provided by Kelly Kimball, President of Kimball Petition Management, a Los Angeles company which collected petition signatures for the Limited Casinos amendment defeated in November 1994).

292. See *Democracy and Dollars*, NEWS-PRESS, July 14, 1994, at 1.

293. Gary Fineout, *Gambling Initiative Dies; Backers Blame Leon*, TALL. DEM., Aug. 10, 1994, at A1.

294. CITIZEN INITIATIVE, *supra* note 3, at 63 (quoting Mary W. Morgan, Collier County Supervisor of Elections).

295. *Id.*

296. *Id.*

297. *Id.*

298. *Id.* (quoting Dot Ruggles, Pinellas County Supervisor of Elections).

299. Steve Nichol, *Forgeries Found on Petitions*, FT. LAUD. SUN SENT., July 6, 1994, at B1.

300. CITIZEN INITIATIVE, *supra* note 3, at 33.

fraud.³⁰¹ In Leon County, fifty-two percent of the signatures gathered by paid workers on the casino-gambling petitions were invalid.³⁰² However, only ten percent of the signatures gathered by volunteers for the Save our Sealife petition were invalid.³⁰³ Election officials in Hillsborough and Leon counties have reported cases of apparent signature forgeries.³⁰⁴ In Leon County, pursuant to section 837.06, *Florida Statutes*, the State prosecuted five individuals for false official statements.³⁰⁵ Each individual confessed to signing names of registered voters to the petitions and entered plea bargains.³⁰⁶

Seemingly, the Legislature should consider prohibiting paid signature gatherers.³⁰⁷ However, in *Meyer v. Grant*,³⁰⁸ the United States Supreme Court held that the First Amendment protects circulation of initiative petitions. Petition circulation involves the type of interactive communication regarding political change that is appropriately described as "core political speech."³⁰⁹ The Court held that

[t]he refusal to permit appellees to pay petition circulators restricts political expression in two ways: First, it limits the number of voices who will convey appellees' message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion.³¹⁰

Consequently, laws prohibiting payment for signature gathering may be unconstitutional. Since *Meyer*, North Dakota has enacted a law which allows committees to pay signature gatherers on an hourly or salary basis but precludes payment on a per signature or bonus basis.³¹¹ No one has challenged the law yet, and it is unclear whether it is

301. *Id.*

302. *Id.* (quoting Ion Sancho, Leon County Supervisor of Elections).

303. *Id.*

304. *Id.* (quoting Ion Sancho, Leon County Supervisor of Elections, and Pam Iorio, Hillsborough County Supervisor of Elections).

305. See *State v. Wagner*, No. C94-13176-AM1 (Fla. 2d Cir. Ct. Mar. 29, 1995); *State v. Eldridge*, No. C94-12086-AM1 (Fla. 2d Cir. Ct. Nov. 16, 1994); *State v. Gaffney*, No. C94-12087-AM1 (Fla. 2d Cir. Ct. Nov. 16, 1994); *State v. Grey*, No. C94-12088 AM1 (Fla. 2d Cir. Ct. Nov. 16, 1994); *State v. Mitchell*, No. C94-12089 (Fla. 2d Cir. Ct. Nov. 16, 1994).

306. See *supra* note 305 and accompanying text. The individuals were required to do community service and to pay restitution to the Leon County Supervisor of Elections Office.

307. CITIZEN INITIATIVE, *supra* note 3, at 63.

308. 108 S. Ct. 1886 (1988).

309. *Id.* at 1892.

310. *Id.*

311. DEMOCRACY BY INITIATIVE, *supra* note 159, at 143 (citing N.C. CENT. CODE § 6.1-01-12 (1988)).

constitutional. At this time, court decisions indicate that limiting or precluding paid signature gatherers may not be a viable option.³¹² Further review of the prohibitions of payment on a per signature or bonus basis is desirable.

Regulation of signature gatherers and additional guidelines for petition forms are options for controlling fraud in signature gathering. A bill filed in the House of Representatives during the 1995 session would have required paid signature gatherers to register with the state and pay a \$20 registration fee.³¹³ The 1996 Legislature may reconsider this proposal.

b. Verification of Signatures

The supervisors of elections advise that it is very difficult to verify a signature when there is more than one voter with the same name in a single county.³¹⁴ Therefore, they argue that some additional identifying information on the form, such as the date of birth, would be extremely helpful.³¹⁵ In addition, requiring the voter identification number on the petition would streamline the verification process considerably, saving time and money. However, this might make signature gathering more difficult because it would necessitate that voters have their registration cards with them if they wished to sign a petition. Legislation filed during the 1995 Regular Session would have amended the *Florida Statutes* to require that signatures be in a specific format.³¹⁶ The legislation did not pass.

The Legislature has attempted to make changes to the initiative signature process. In 1990, the Legislature enacted Committee Substitute for Senate Bill 870; however, the Governor vetoed the bill.³¹⁷ This bill would have required signatures on initiative petitions to be witnessed and the sponsor to certify that no per signature fee was paid.³¹⁸ It also would have revised the time period for signature validation.³¹⁹ Governor Bob Martinez stated in his veto message that this bill would

312. See *LIMIT v. Maleng*, 874 F. Supp. 1138 (W.D. Wash. 1994) (holding invalid a state law prohibiting payment to signature gatherers on a per-signature basis).

313. Fla. CS for HB 1237 (1995); Fla. CS for HB 2063 (1995); see also FLA. H. COMM. ON ETHICS AND ELECT., *FLORIDA'S CITIZEN INITIATIVE PROCESS* (1994) (on file with comm.).

314. CITIZEN INITIATIVE, *supra* note 3, at 33.

315. *Id.*

316. Fla. CS for SB 1392 (1995); Fla. CS for HB 1237 (1994).

317. Veto of Fla. SB 870 (1990) (letter from Gov. Martinez to Sec'y of State Jim Smith, July 2, 1990) (on file with the Sec'y of State, The Capitol, Tallahassee, Fla.).

318. Fla. CS for SB 870 (1990).

319. *Id.*

add substantial burdens to the certification procedure.³²⁰ According to Governor Martinez,

The amendments to § 100.371, F.S., proposed by the bill so stringently limit access to certification of a citizens initiative that it must be viewed as an effort to quash or severely limit the ability of the people to revise their constitution, in contradiction to the spirit expressed by this reservation of power.³²¹

In 1991, the Legislature enacted House Bill 1809, but Governor Lawton Chiles vetoed this measure as well.³²² This bill also would have required the sponsor of an initiative petition to certify that it had not paid a per signature fee for the collection of initiative petition signatures.³²³ The Governor noted in his veto message that he objected to the additional burden this bill would place on a person wishing to propose a constitutional amendment to the citizens of this state.³²⁴ In a statement similar to that of Governor Martinez, Governor Chiles noted that he was unaware of any abuse of the current initiative petition procedure that would warrant more stringent regulation.³²⁵ However, the fraud convictions of signature gatherers in Leon County, as well as the numerous reports of abuse prior to the 1994 election, demonstrate that abuses of the process do occur.

c. Signature Verification Fees

The *Florida Statutes* require initiative committees to pay the supervisor of elections ten cents per name submitted to cover the cost of verification.³²⁶ However, in the event a committee is unable to pay for verification, the committee may file "undue burden" documentation requesting a waiver of this cost.³²⁷ The supervisor of elections may request reimbursement from the Division of Elections when a committee files an undue burden form.³²⁸ Many supervisors of elections report that the ten cents verification fee is insufficient.³²⁹

320. *Id.*

321. Veto of Fla. SB 870 (1990) (letter from Gov. Martinez to Sec'y of State Jim Smith, July 2, 1990) (on file with the Sec'y of State, The Capitol, Tallahassee, Fla.).

322. Veto of Fla. HB 1809 (1991) (letter from Gov. Chiles to Sec'y of State Jim Smith, May 29, 1991) (on file with Sec'y of State, The Capitol, Tallahassee, Fla.).

323. Fla. HB 1809 (1991).

324. *Id.*

325. *Id.*

326. FLA. STAT. § 99.097(4) (1995).

327. *Id.*

328. *Id.*

329. CITIZEN INITIATIVE, *supra* note 3, at 65.

Some supervisors of elections maintain that if an initiative committee pays for signatures, the committee should also pay the signature verification fee.³³⁰ Prior to 1984, the undue burden provisions applied only to petitions qualifying candidates for public office and not to initiative petitions.³³¹ However, in *Clean-Up '84 v. Heinrich*,³³² a federal district court found section 99.097(4), *Florida Statutes*, to be a violation of the Fourteenth Amendment. The court found that not allowing the initiative committees to file undue burden documents made access to the ballot dependent on the wealth of the committee.³³³ Keeping in mind that the United States Supreme Court has held that precluding payment to signature gatherers is a violation of the First Amendment,³³⁴ it is plausible to assume that requiring payment for verification is too restrictive on the initiative process and may be unconstitutional as well.

d. *Petition Deadlines*

The supervisors of elections overwhelmingly agree that their biggest problem is the deadline for filing petitions in their offices.³³⁵ The Florida Constitution and the *Florida Statutes* address the petition submission deadline.³³⁶ A committee must submit its proposed initiative to the electorate at a general election that is more than ninety days after the committee has filed the initiative with the secretary of state.³³⁷ In addition, section 100.371, *Florida Statutes*, provides that initiatives will appear on the ballot for a general election that must occur more than ninety days after the secretary of state certifies the petition.³³⁸

In 1980, the administrative rules required sponsors to submit petitions 122 days prior to the general election in which the constitutional amendment would appear on the ballot.³³⁹ A political committee,

330. Fla. State Assoc. of Supervisors of Elections, Inc., *Legislative Agenda 1994-95* (1995) (recommending revision to laws to prohibit petition committees from filing an undue burden oath if they pay to get petitions signed) (on file with Fla. S. Comm. on Gov't Reform & Oversight, Tallahassee, Fla.).

331. FLA. STAT. § 99.097 (1995).

332. 582 F. Supp. 125 (M.D. Fla. 1984), *aff'd*, 759 F.2d 1511 (11th Cir. 1985).

333. *Id.*

334. *Meyer v. Grant*, 108 S. Ct. 1886, 1894 (1988).

335. CITIZEN INITIATIVE, *supra* note 3, at 65.

336. FLA. CONST. art. XI, § 5; FLA. STAT. § 100.371(1) (1995).

337. FLA. CONST. art. XI, § 5.

338. FLA. STAT. § 100.371 (1995).

339. FLA. ADMIN. CODE ANN. r. 1C-7.0091 (1995). Rule 1C-7.0091 provides that the supervisors of elections must submit verified signatures to the Division of Elections no later than 5 p.m. of the 91st day preceding the general election. *Id.* Any certificate received late will not be eligible to fulfill the required number of signatures for any district or the state as a whole. *Id.*

called Citizens Proposition for Tax Relief, attempted to submit signatures closer than 122 days prior to the next general election.³⁴⁰ The Division of Elections advised that it would not accept the signatures, and the committee challenged the rule in the Florida Supreme Court.³⁴¹

The Florida Supreme Court declared unconstitutional the rule requiring submission of signatures 122 days prior to the next general election.³⁴² The court found that the Legislature could construe and interpret "filing," as used in the constitution, to require, as a prerequisite to acceptance for filing, the verification of the electors' signatures to ensure ballot integrity.³⁴³ However, the court found that the secretary of state does not have statutory authority to require committees to file initiative petitions 122 days before the next general election.³⁴⁴ The court held that there was no constitutional or statutory authority for the 122-day limitation.³⁴⁵

Arguably, the Legislature could set a deadline for submission of petitions to the supervisors of elections at a reasonable time prior to the ninety-day deadline before which the supervisors of elections must certify valid signatures to the Division of Elections. Legislation was filed during the 1995 Regular Session in both the Florida House of Representatives and in the Senate to require sponsors to submit their petitions 151 and 120 days, respectively, prior to the election.³⁴⁶ The legislation did not pass.

Ballot integrity and the initiative process would improve if the petition deadline were moved to a time prior to the filing deadline. This would provide the supervisors of elections adequate time to verify the petition signatures. From 120 to 151 days, as previously proposed legislation suggested, seems reasonable.

3. *Judicial Review*

The supreme court reviews constitutional initiatives to ensure compliance with "single-subject" provisions and to ensure that ballot titles and summaries are not misleading.³⁴⁷ The current system of

340. *Citizens Proposition for Tax Relief v. Firestone*, 386 So. 2d 561 (Fla. 1980).

341. *Id.*

342. *Id.*

343. *Id.*

344. *Id.*

345. *Id.*

346. Fla. CS for SB 1392 (1995); Fla. CS for HB 1237 (1995).

347. FLA. CONST. art. IV, § 10; FLA. CONST. art. V, § 3; FLA. STAT. §§ 16.061, 101.161 (1995).

judicial review of initiatives is a concern to many.³⁴⁸ There is criticism that the court's rulings on initiatives have "smacked of a paternalistic attitude that says a proposal is good for the people or bad for the people."³⁴⁹ One scholar believes the court has concerned itself more with the "nature of the amendments than with the legal nature of the [one-subject or ballot language] tests."³⁵⁰ Initiative committees complain that the court is inconsistent and has not established guidelines on which drafters can rely.³⁵¹ One initiative committee president believes that the court should review initiatives only after voters adopt them.³⁵² On the other hand, some believe that judicial review should be expanded to include ruling on the constitutionality of a proposed amendment.³⁵³ Some of the supreme court justices also have acknowledged problems in the current system of judicial review.³⁵⁴

The supreme court denied ballot position to six of the ten initiative proposals it reviewed prior to the 1994 general election. The court rejected two of these for failing to meet the single-subject test,³⁵⁵ another on the basis of a misleading ballot title and summary,³⁵⁶ and the remaining three for failing to satisfy the single-subject and misleading language criteria.³⁵⁷

In Florida, sponsors of an initiative may request that the secretary of state submit the initiative for judicial review after collecting ten percent of the necessary signatures.³⁵⁸ Most committees have taken advantage of this option.³⁵⁹ Others, however, collect all the requisite signatures before judicial review.³⁶⁰

348. CITIZEN INITIATIVE, *supra* note 3, at 35-52.

349. *Id.* at 40 (quoting John T. Ware, former state senator and member of 1968 Constitution Revision Commission).

350. *Id.* at 42 (quoting Professor Joseph W. Little, University of Florida College of Law).

351. *Id.*

352. *Id.* at 49 (quoting David Biddulph, Chairman, Tax Cap Committee).

353. *Id.* at 37 (quoting Chesterfield Smith, Holland & Knight; former President, A.B.A.; Chairman, 1968 Constitution Revision Commission), 48 (quoting Michael Levine of Proposition for County Choice Gaming, Inc.).

354. *Id.*

355. Advisory Op. to the Att'y Gen. re Tax Limitations, 694 So. 2d 486 (Fla. 1994).

356. Advisory Op. to the Att'y Gen. re Limited Casinos, 656 So. 2d 466 (Fla. 1994).

357. Advisory Op. to the Att'y Gen. re Property Rights, 644 So. 2d 486 (Fla. 1994); Advisory Op. to the Att'y Gen. re Save Our Everglades Trust Fund, 636 So. 2d 1336 (Fla. 1994); Advisory Op. to the Att'y Gen. re Restricts Laws Related to Discrimination, 632 So. 2d 1018 (Fla. 1994).

358. FLA. STAT. § 15.21(3) (1995).

359. See e.g. Advisory Op. to the Att'y Gen. re Casino Authorization, Taxation, and Regulation, 656 So. 2d 466, 467 (Fla. 1995). This initiative was submitted to the court prior to collection of all required signatures; however, the court denied the ballot position to the petition because the title and summary were misleading. *Id.*

360. CITIZEN INITIATIVE, *supra* note 3, at 60.

The constitution could be amended to provide that the court, in its advisory opinion, decide whether an initiative is more appropriate as statutory law than as a constitutional amendment.³⁶¹ This role for the court is advocated by some who recommend the development of a statutory initiative process.³⁶² Under this scenario, the court would assist in determining which initiatives would have to be constitutional amendments and which could be statutory material. Alternatively, revisions could limit the court's role to advising on an initiative only when an adopted initiative is challenged.³⁶³

An argument can be made that the constitutional initiative process should be revised to eliminate or reduce the number of initiatives being denied ballot position because of misleading language in the ballot title or summary.³⁶⁴ The Oregon process could be a model.³⁶⁵ Under that process, the Oregon Attorney General drafts ballot titles and summaries, and the Oregon Supreme Court determines whether the language is insufficient or unfair and it has authority to rewrite and correct any misleading language.³⁶⁶ With this authority, the Florida Supreme Court would not need to remove proposals from the ballot, but could correct a misleading title and summary.³⁶⁷

Some states provide assistance in drafting initiative language by the state's legislative staff or other state officials.³⁶⁸ As Florida does, most states with initiative processes permit pre-election judicial review for procedural compliance;³⁶⁹ however, few states allow early court intervention on the grounds of proper subject matter.³⁷⁰ As in Florida, other states' courts generally refrain from pre-election reviews of initiatives on constitutional grounds and prefer to wait for a court challenge after a measure is adopted.³⁷¹ The same, however, is true of statutory laws. Statutes may be on the books for many years before being challenged in the courts.

361. *Id.* at 61.

362. *Id.*

363. *Id.*

364. Advisory Op. to the Att'y Gen. re Tax Limitations, 694 So. 2d 486 (Fla. 1994).

365. CITIZEN INITIATIVE, *supra* note 3, at 61 (quoting Overton, J.).

366. *Id.*

367. *Id.*

368. *Id.* at 360. Alternatives for drafting ballot titles and summaries include having the secretary of state, the attorney general, or legislative bill drafting services assist in drafting initiatives. More expertise in drafting ballot titles and summaries would prevent misleading language. However, it can be argued that a true citizen initiative should be drafted by the sponsor.

369. *Id.* at 362. Most states with constitutional or statutory initiative processes impose a single-subject rule on the content of the proposals. *Id.* Most also have procedures for ballot title and summary review. *Id.* at 361.

370. *Id.* at 363.

371. *Id.*

One scholar has suggested that the court has gone beyond its constitutional charge by keeping off the ballot amendments that the court perceives as undesirable public policy.³⁷² Similarly, another commentator has criticized some of the court's perceived "inconsistencies."³⁷³ In contrast, others believe that the court is in an untenable dilemma: it "get[s] thrown right into the forefront of every hot political issue . . . [and] [t]hose are decisions made at tremendous political cost. The court is seen to be standing in the way of a stampede. Those who want to stampede keep blaming the court for a restraint of popular will."³⁷⁴ Despite the concerns of some, others believe that the judicial process is functioning well and provides desirable checks and balances on the initiative process.³⁷⁵ As initiatives are increasingly proposed, the controversy regarding the supreme court and its decisions regarding initiatives will continue. The judicial review process is an area which defies easy resolution.

4. *Public Awareness of the Effects of Initiatives*

Direct initiative processes may not provide the degree of debate and analysis desirable for determining public policy issues.³⁷⁶ For example, Florida's direct constitutional initiative process requires only that initiative sponsors publish their balloted proposal twice prior to the election in one newspaper of general circulation in each county.³⁷⁷ In addition, once the secretary of state has approved a proposal's ballot title and summary, a sponsor cannot modify the proposal. Consequently, a sponsor has no opportunity to refine an initiative in response to concerns raised during the publication phase. The electorate may adopt constitutional amendments without adequate explanation of their impact and thus cause unanticipated consequences.

Alternatively, the legislative process maximizes public awareness and deliberation. When the Florida Legislature is considering enacting a law, various committee staff members analyze the bill, including the bill's fiscal impact.³⁷⁸ Legislative meetings are open to the public and provide a forum for debate.³⁷⁹ Frequently, this process results in revisions and modifications to proposed measures and raises public awareness of particular issues.

372. *Id.* at 41 (quoting Professor Thomas C. Marks, Stetson College of Law).

373. *Id.* at 62.

374. *Id.* (quoting Talbot D'Alemberte).

375. CITIZEN INITIATIVE, *supra* note 3, at 35-52.

376. *Id.* at 40-41.

377. FLA. CONST. art. XI, § 5.

378. CITIZEN INITIATIVE, *supra* note 3, at 67.

379. *Id.*

The source of public information about initiatives is frequently paid advertising. This method can result in highly financed, one-sided arguments for or against proposals.³⁸⁰ To provide more balanced debate, lawmakers could require that initiative sponsors conduct public hearings on a proposal's merits.³⁸¹ Alternatively, lawmakers could require government-sponsored hearings around the state on each amendment placed on the ballot.³⁸²

Fourteen states require the distribution of a ballot pamphlet containing an unbiased description and analysis of ballot measures.³⁸³ Some states require sponsors to publish only a fiscal impact statement. Florida lawmakers could require petition organizers to provide voters with what one commentator calls an "impact statement."³⁸⁴ This impact statement would summarize not only the estimated costs of the amendment but also other effects on laws, taxes, spending, and public policies.³⁸⁵ An unbiased governmental entity might better perform this function. One observer recommends that the secretary of state publish, for the citizens' edification, a pamphlet explaining all ballot issues in "plain talk."³⁸⁶

Adding requirements for hearings and impact statements would result in higher costs for either the initiative sponsor or the state entities. Higher costs for initiative sponsors is a double-edged sword—special interest groups might easily raise funds, while a true grassroots sponsor might find increased costs restrictive.³⁸⁷ Consequently, it is likely that the taxpayer would pay increased costs associated with initiatives.³⁸⁸ However, an indirect initiative process could alleviate the costs of these requirements. Proposals would go through the established legislative process and be exposed to strict review by legislators, committee staff, and the public.³⁸⁹

380. DEMOCRACY BY INITIATIVE, *supra* note 159, at 21.

381. *Id.* at 21 (recommending public hearings once the committee has gathered 25% of the required signatures).

382. *Id.*

383. *Id.* at 67.

384. *Id.* at 67-68 (quoting Tom Sander, Editor, Fort Lauderdale Sun Sentinel).

385. *Id.*

386. *Id.* at 68. "Plain talk" would be clear language which the average citizen could understand. *Id.*

387. *Id.* at 47-49. Former state Senator Marlene Woodson-Howard responded in the committee's survey that the initiative process "has become something which can be bought by special interests." *Id.* at 47. David Biddulph, Chairman, Tax Cap Committee, responded that the process "is too uncertain, difficult, and expensive" for the average citizen to use. *Id.* at 49.

388. *Id.* at 68. Tom Sander stated that, for the 1992 election, California's secretary of state published a plain-talk pamphlet explaining 13 amendments that cost \$4.32 million. *Id.*

389. *Id.* at 41. Professor Thomas C. Marks, Jr., Stetson University College of Law, stated "many proposed changes can appear reasonable on their face when a little thought would show that if they are placed on the ballot and ratified, they could wreak havoc on the ability of government to carry out its functions." *Id.*

VIII. ESTABLISHING A STATUTORY INITIATIVE PROCESS

Florida's current constitutional initiative process allows constitutional amendments that would often be more appropriate for statutory law.³⁹⁰ For example, Justice Parker Lee McDonald thought that the net fishing amendment, adopted in 1994, illustrated this point.³⁹¹ Because the citizens of Florida have only one avenue to exercise "direct democracy"—amendment to the constitution—the lack of a statutory initiative option encourages constitutional changes which would be more appropriate as statutory measures.

Arguably, the constitution should be a broad framework outlining the composition, duties, and powers of governmental bodies, and it should be limited to the fundamental issues of governance.³⁹² Therefore, processes of amendment and revision should be limited.³⁹³ When the Legislature passes a law that is later found to have errors or unintended consequences, it can amend the law during the next legislative session. Constitutional amendments, by contrast, become fairly rigid and difficult to change even if a mistake is made. The same initiative processes that created an errant initiative provision must be used to correct the mistake.

Florida should institute a statutory initiative.³⁹⁴ Such a method would provide citizens with an additional avenue of direct democracy and protect the constitution from amendments that would be more appropriate as statutes.³⁹⁵ Florida is one of only three states that provide a constitutional initiative process without also providing a statutory initiative process.³⁹⁶ The other two states in this category, Illinois and Mississippi, have more restrictive initiative processes than Florida. While, to date, few citizen initiatives have made it to the Florida ballots and fewer have amended the constitution, recent history indicates that the number of initiative petitions will increase.³⁹⁷ A statutory process would decrease the number of attempted constitutional

390. See Advisory Op. to the Att'y Gen. re Limited Marine Net Fishing, 620 So. 2d 997, 1000 (Fla. 1993) (McDonald, J., concurring).

391. *Id.*

392. CITIZEN INITIATIVE, *supra* note 3, at 54.

393. *Id.* at 41 (quoting Professor Thomas C. Marks, Jr., Stetson University College of Law).

394. *Id.* at 35-52. Survey respondents who concur with considering the development or implementation of a statutory initiative include constitutional scholars, former members of the constitution revision commissions, attorneys representing parties to the recent court hearings on initiatives, and some representatives of citizen initiative committees. *Id.*

395. FLA. H. COMM. ON ETHICS AND ELECTIONS, FLORIDA'S CITIZEN INITIATIVE PROCESS 22 (1994).

396. COUNCIL OF STATE GOV'TS, *supra* note 151, at 296.

397. See discussion *supra* part V.D.

amendments. However, Florida must address concerns about the type of statutory initiative process to adopt and the procedures for the new process.

In developing a statutory initiative process, several issues need to be considered. These issues include the direct or indirect nature of the process should be indirect or direct; the role of the judiciary, secretary of state, and attorney general in reviewing initiatives; and the procedures for amending initiatives.³⁹⁸ Further, the same issues currently identified with Florida's constitutional initiative process would apply to a statutory process. Those concerns include ballot title and summary drafting, judicial review procedures, public education methods, and the signature-gathering process.³⁹⁹

An indirect statutory initiative method could alleviate many of these concerns. For example, if the Legislature identifies problems in an initiative, it could propose alternative ballot title and summary language to be coupled with a statutory amendment on the ballot. The legislative process would provide increased opportunities for issue analysis and public comment on initiatives and decrease the need for additional funding.

Another significant consideration is the number of signatures required for passage of a statutory initiative. Most states with a constitutional initiative and a statutory initiative process require fewer signatures for a statutory initiative.⁴⁰⁰ The reasons for this are that a statutory initiative is easier to revise and a lower signature requirement is an incentive for sponsors to seek statutory change rather than constitutional amendment. In some states, however, if the legislature does not adopt a statutory initiative, a sponsor must gather additional signatures to place its initiative on the ballot.⁴⁰¹ Although the number of signatures for a statutory initiative should be lower than for a constitutional initiative, it is not in Florida's best interest to make the signature requirement so low as to invite an onslaught of initiatives. This could adversely affect Florida's representative form of government and potentially confuse voters with long and complex ballots.

After consideration of these issues, institution of a statutory initiative process would require a constitutional amendment. This could be accomplished by the Florida Legislature's filing a joint resolution during the 1996 session to place a constitutional amendment on the 1996

398. CITIZEN INITIATIVE, *supra* note 3, at 73.

399. *Id.*

400. *Id.*

401. *Id.*

ballot.⁴⁰² Alternatively, the Constitution Revision Commission scheduled to meet in 1998 could address the initiative process along with other constitutional revisions.⁴⁰³ This would forestall adoption of a new process until elections in 1998 but would allow more deliberation.⁴⁰⁴

IX. CONCLUSION

Since 1968, Florida has provided its citizens a method of amending the constitution by citizen initiative. However, with respect to our current constitutional initiative process, observers have identified several areas of concern that merit further review. Notwithstanding those issues, the interest in and use of initiatives is on the rise and there is no indication of public sentiment to deny citizens the right to propose initiatives. It is unlikely that the electorate would adopt an amendment to repeal Florida's method of direct democracy. It seems more practical to consider improvement of, or an alternative to, the current method of initiatives.

The prospect of numerous and continual amendments threatens the sanctity of the constitution. Florida should establish a statutory initiative process to preserve the integrity of the constitution and provide citizens another opportunity to affect policy directly. Further, the development of a statutory initiative process would protect the constitution from provisions more appropriate as statutory law. To increase public participation and encourage public comment and debate on initiatives, an indirect statutory initiative process is the best alternative.

In tandem with instituting a statutory initiative process, Florida should make it more difficult to amend the constitution by initiative. Factors to be considered in limiting constitutional initiative amendments include increasing the number of petition signatures, requiring a super-majority vote to enact an amendment, and restricting the subject matter of initiatives. Citizens would be more likely to accept limitations on constitutional initiatives if they were provided an avenue of direct democracy through access to statutory initiatives.

Whether the Legislature addresses the development of a statutory initiative process directly or leaves the matter to the Constitution Revision Commission, there should be thorough deliberation and evaluation of alternatives and all procedural aspects of the initiative process. Prior to proposing an amendment to the electorate, either the

402. *Id.* at 73.

403. *See* Maher, *supra* note 63, at 67.

404. *Id.*

Legislature or the Commission should solicit the advice of experts and conduct public hearings on developing a new process.

